

KITAB -UN- NIKAH

**THE BOOK ON
MUSLIM MARRIAGE**

By
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KITAB-UN-

The Book on

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The Subject of Marriage

Broadly speaking, marriage is a contract between two parties, male and female, in terms of which they are bound to each other subject to certain personal and social rights and duties.

The Definition of the Word Nikaah

The corresponding Arabic word for marriage, is *NIKAAH* which literally construed, means to have sexual intercourse or to unite. Thus it is said in Arabic :-

"The trees got married when the wind blew and they inclined towards each other while the branches entangled with one another".

تَنَاقَحَتِ الْأَشْجَارُ إِذَا تَمَازَلَتْ
وَانْضَمَّ بَعْضُهَا إِلَى بَعْضٍ

Nikaah, however, as an Islamic legal concept has been variously defined by Islamic scholars with the variation dependent upon whether the emphasis is placed upon the matrimonial contract itself (also known as *Aqd*) or the sexual act (also known as *Watt*) which consummates the matrimonial contract.

The *HANAFIY-YAH* school of thought hold the view that the *Nikaah* is constituted by the sexual act between the married couple and that the matrimonial contract which precedes it but

only prefigures such sexual act. This view is consistent with the literal meaning of the word, *NIKAAH*.

Thus when the word *Nikaah* is employed in either the Holy Qur'an or the *Sunnah*, without specific reference to the marital contract, then the meaning ascribed thereto is *WATT*. By way of an illustration of this interpretation the following verses from *Surah Nisaa'* (verse 22) in the Holy Qur'an will suffice :

"And marry not women whom
your fathers married, except
what is past".

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ
النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ

Since there is no reference in the above verse to the marital contract as such, the *Hanafiyyah* argue that what the said verse seeks to prohibit is not so much the marital contract but rather the sexual union between a son and his step-mother. It is consequently according to this interpretation, the sexual union which constitutes the immortality and not so much the marital contract which precedes it.

With reference to the following verse, the *Hanafiyyah* give a different interpretation:

"So if the husband divorces his
wife (thrice) irrevocably, he
cannot after that, remarry her
until she has married another
man"

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ
حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

(*Suratul Baquarah* : verse 230)

The *Hanafiyyah* interpret the word *Nikaah* in this verse as signifying the marital contract (*Aqd*) and not the union (*Watt*). The above interpretation is based on the fact that the injunction is aimed at the woman. The *Hanafiyyah* further claim that the

word, *Watt* signifies an act to be performed in which the woman does not play an active role. She is only a passive partner.

If the above interpretation of the word, *Nikaah* is correct, then it means that a man may enter into a marriage with a woman whose husband has irrevocably divorced her, with the sole purpose of making her eligible for remarriage to her former husband, by divorcing her without consummating the marriage.

The above interpretation, however, is with the greatest respect to the said school of thought, not correct since it flies in the face of the *Sunnah* which clearly negates it. Our *Nabiy Muhammad S.A.W* has clearly stated that the *Tahleel* (when the woman becomes *Halaal* for her first husband for remarriage) is only after the consummation of her marriage to another man.

There is an incident that occurred during the time of our *Nabiy S.A.W* regarding the wife of *Rifa-ah* who had thrice divorced her. She questioned the *Nabiy S.A.W* whether she could only perform the *Aqd*? The Holy Prophet asked her :

"Do you desire to return to
Rifa-ah? The *Nabiy* said: "No
until you taste of him and he
taste of you".

أَتُرِيدِينَ أَنْ تَرْجِعِي إِلَيَّ رِفَاعَةَ ؟
قَالَ لَا حَتَّى تَذُوقِي عُسَيْلَتَهُ

رواه البخارى

وَيَذُوقُ عُسَيْلَتَكَ

The above words used by the Holy Prophet *S.A.W* without doubt signifies the sexual act.

Imaams Shafi-iy, Malikiy and Hambaliy all interpret the word, *Nikaah* as meaning the *Aqd* and not the *Watt*. Their interpretation is based on the figurative meaning of the word *Nikaah*. The interpretations are therefore in juxtaposition to one another.

From this we deduce that this interpretation is the direct opposite of the literal meaning.

It is therefore more appropriate to assimilate both interpretations in order to get a better understanding of the word, *Nikaah* which is at times equated to *Aqd* and *Watt*.

The third interpretation of the word, *Nikaah* is to do with the "Technical" meaning thereof i.e. "*FIQH TERM*". Here the *Ulamaa* hold the view that the word, *Nikaah* indicates, that the husband by power of the marital contract is guaranteed conjugal rights, and is not entitled to ownership of his wife.

When the *Aqd* has been solemnized, the husband can make use of the woman's body to enjoy sexual intercourse with her at all reasonable times allowed by the *Sharee-ah*, subject to him fulfilling all obligations due to his wife in strict accordance with the *Sharee-ah*. The wife who is now subject to marital power cannot and may not refuse his attentions.

While the relationship created by marriage involves companionship, love, affection, mutual services and sexual intercourse, it also restricts the husband from assuming that he owns his spouse, body and soul. One of the most important consequences of a marriage that can never be altered by the parties is that from the moment they marry, the husband owes his spouse a duty of support. There is no reciprocal duty of support from the wife to the husband. Therefore the husband is not allowed to assume that whatever his wife owns is also now owned by him.

Ill informed husbands are under the false illusion that a marital contract is like a business contract, whereby the husband assumes absolute power to administer her property exactly as he pleases without any restraint.

A husband has no automatic right to demand his spouse to cook, wash and to do the general house chores without question. Allah did not create womenfolk to be like a beast of burden. They are

a boon (*N'IMAH*) to us since they ensure the growth of man as a way of life, living and dying. Allah says:

"They (the womenfolk) are your coverings and you are their coverings".

(*Suratul Baquarah* (verse : 187)

They have certain rights and likewise men too have theirs. The scale of justice must never ever be transgressed. In *Surah Talaq* (verse 06) Allah says :

"If they give suck to your children, then give them their payments".

هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ
لِبَاسٌ لَهُنَّ

فَإِنْ أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ
أُجُورَهُنَّ

This verse further proves that the husband do not possess them since the *Nikaah* only gives the husband the right to their bodies only to satisfy his sexual needs and nothing else.

If we consider the following analogy. Identical twin brothers marry identical twin sisters. Erroneously the one brother sleeps with his sister in-law (twin sister) and realises his error later, the *Sharee-ah* then stipulates that the brother who slept with her, must give her a dowry for having slept with her. A marital separation comes into effect immediately and the aggrieved woman must undergo an *Iddah* (period of waiting).

If she is pregnant, then the *Sharee-ah* regards such a child as legitimate. The dowry which is given to this woman belongs to her and not to her husband to further proof, that, if the woman had entirely become the possession of the man through the *Aqd*, then the dowry would have been his, which is not the case. This type of error is called *WAT USH SHUBU HAH* (sex through a judicial error).

و ط أ الشبهة

NOTE : We learn thus, that when the contract is solemnized the following factors become effective :

- The husband takes possession of the woman's body only.
- He can command her to sleep with him even though she is busy at her oven preparing food for her.
- This is his sole right and this right is not afforded to her.

Upon the above facts the *Nabiy S.A.W* has said :

"I swear in the Name of the one in whose power my soul lies. Any woman whose husband calls her to her bed and she refuses him, then whatever is in the heaven (i.e. The Angels) will show their anger and displeasure towards her until the husband becomes satisfied with her again".

وَالَّذِي نَفْسِي بِيَدِهِ مَا مِنْ
رَجُلٍ يَدْعُو امْرَأَتَهُ إِلَى فِرَاشِهَِا
فَتَأْبَى عَلَيْهِ، إِلَّا كَانَ الَّذِي فِي
السَّمَاءِ سَاحِطًا عَلَيْهَا حَتَّى
يَرْضَى عَنْهَا

رواه البخاري ومسلم وأبو داود والنسائي

According to this, the woman has no right whatsoever to command her husband to sleep with her should she have a strong sexual urge. This interpretation is the most *ARJAH* or *RAAJIH* (preferable/acceptable) viewpoint.

There are some *Ulamaa* however among the *Shafi-iys* who hold the opinion and say that the definition of the word *Nikaah* infers that both parties have a duty to have sexual intercourse with each other since they both possess each others bodies. The wife can therefore compel the husband to submit to sexual intercourse and vice versa. Should the husband withhold conjugal rights from his spouse then this action on his part will be *Haraam* on him.

He will now be the cause that she will be bodily harmed, or that

she will become unchaste and that she may even degrade herself character wise. The *Sharee-ah* clearly stipulates that when two people live together and their being together leads to in chastity, character degradation or that they are even a bad influence on their children, then the **Husband must either divorce her with justice or cover her with justice sexually.**

When we speak of the *Aqd* with all its rules and regulations, it is meant the *Aqdush Shar-ee* عقد الشرعي which signifies a marital contract that conforms to the matrimonial formula as prescribed by Islamic Law.

There are certain circumstances in which a marriage will be unlawful and thus void. A marriage is unlawful if :

- The marriage contract was entered into of which the woman was still under *Iddah* of any form.
- A woman marries a man who already has four wives.
- One of the party is a *Khunthal Mushkil* خنثى المشكى (Hermaphrodite).
- People related to each other by blood or affinity.
- Radaa'* (foster relationship). رضاع.
- Musaaharah* (family ties through marriage) مصاهرة.
- Non believers, *Mushriks* (polytheist) or *Murtads* (Apostates) like *Ahmadies/Quadianies/Baha-ies* etc.

It is also necessary that the *Aqd* must be performed with the following conditions:

- The *Eejaab* إيجاب (mode of elocution of the person representing the bride)

- 2) The *Quabool* قبول (acceptance by the husband)
- 3) The *Shaahidayn* شاهدين (Two witnesses)
- 4) The *Waliy* ولي (woman's representative)

The Hukum of the Nikaah

Marriage like any other *Hukum* of the *Sharee-ah* is subject to the following five decrees. It is either *Fard*, *Sunnah*, *Mubaah*, *Haraam* or *Makrooh*. We will deal with each of the five *Ahkaams* individually.

The Nikaah Which is Mubaah

When a man is competent to fulfil all the requirements necessary to sustain a *Nikaah*, but marries exclusively for the purpose of deriving sexual pleasure therefrom, such a *Nikaah* is designated as *Mubaah*.

The Nikaah Which is Waajib

The *Nikaah* is *Waajib* on the man when he is by the means to support a wife in accordance with the rules laid down by the *Sharee-ah* in the *BAABUN NAFQUAH*, باب النفقة while he fears that if he does not marry, he would commit *Zinaa*. Similarly, if a woman fears that she may be harmed by hooligans or

that she may be attacked by an adulterer while the only way to protect her and her property is by means of marriage, then *Nikaah* would be *Waajib* in her case. The *Nabiy S.A.W.* has said:-

"O Ye young people! Whoever among you feel that he is able to marry, let him marry, for it will prove to be an aversion of the eyes and the best protection for the private organ. And he who is unable to marry, let him fast, as this will diminish his sexual urges."

رواه البخارى ومسلم وأبو داود والترمذى والنسائى

The Nikaah Which is Haraam

It will be *Haraam* for a couple to enter into marriage when the man at the time happens to be incapable of supporting a wife. Should a woman agree to marry such a man while she supports herself, then no harm is done. Nevertheless, should it become apparent after a while, that the woman is not by means anymore to support herself, then she would be within her rights to claim *Nafaquah* نفقة (maintenance) from her husband. If he fails to support her due to the fact that he cannot afford to support her, then it would be *Waajib* for such a person to divorce such a woman or alternatively, the woman could also *Fasakh* فسخ (dissolve) her marriage.

The Nikaah Which is Makrooh

The *Nikaah* would be *Makrooh* if the woman fears that she cannot fulfil her marriage obligations. Example : The woman has no desire for marriage, neither does she fear that she will commit *Zinaa'* and she also does not have any reason whatsoever for marriage.

In the event of the man being unable to fulfil his obligation (of support) by way of either *Nafaquah* or the *Mahr* (dowry), and such a man has no desire to marry nor does he have any fear of committing *Zinaa'* then marriage for such a man will be *Makrooh*.

Note : If a man is an *Aabid* (worshipper) who is by the means to fulfil his obligations of support and there is nothing wrong with him physically to prevent him from fulfilling the *Aqd*, then it would be *Afdal* for such a person not to enter into a marital contract lest it interferes with his *Ibaadah*. However, should he not be an *Aabid*, then it would be *Afdal* for him to marry so that his *SHAHWAH* (sexual urge) will not at some time or another lead him to what is *Haraam*.

The Nikaah Which is Sunnah

It is *Sunnah* for a man to marry a woman when his intention is to keep himself chaste or he has a desire to have children providing he can afford it. The *Nabiy S.A.W* has said:

"Marry affectionate and fertile women. For truly I would like

تَزَوَّجُوا الْوُدَّ وَالْوَلَدَ فَإِنِّي

to feel proud that I have the most followers on the Day of Judgement."

رواه أبو داود والنسائي والحاكم

مُكَاتِّرٌ بِكُمْ الْأُمَمَ يَوْمَ الْقِيَامَةِ

Factors Sunnah in Nikaah

There are many things which are *Sunnah* that could be done if one is of the intention of entering into Holy Matrimony. Among these are :

1) It is *Sunnah* when one is of the intention to marry, to look at the face and hands of the woman he wishes to marry even if he views these parts with desire or lust. Desire in this case will give rise to longing to be joined with her, which of course is what is required here. It is not permissible for a man intending to marry a woman to view any other parts of her body.

Those parts of the body which the man is allowed to view, are also *Sunnah* for the woman to view. This is so, because a man's emotions are aroused likewise in the case of a female when viewing the body of a man.

NOTE : Should it occur that the man cannot due to unforeseen circumstances, approach the woman he desires, for the simple reason that he is of the bashful type, then it is permissible for him to send a female to view the girl who will then furnish him with a physical description of her. This is based on the fact that such an action will promote love and affection. Therefore, anything that will bring two people to love and harmony is requested by the *Sharee-ah*.

Proof that this is *Sunnah*, is found in a *Hadeeth* when the *Nabiy S.A.W.* said to *Sayduna Mugheerah Bin Shu'bah*, when he pro-

posed to a certain girl:

"Have a look at her, for it is most appropriate to view her in order to bring about love and affection between the two of you."

أَنْظُرْ إِلَيْهَا فَإِنَّهُ آخَرَى
أَنْ يُؤَدَّمَ بَيْنَكُمَا (الْمُودَّةُ
وَالْأُلْفَةُ)

رواه الترمذى وحسنه الحاكم وصححه

- 2) It is also *Sunnah* for a man to propose to a *Bikr* (virgin). However, should a man have minor children from a previous marriage that rather marry a divorced woman or a widow.

Problems may crop up when marrying a young girl because of the responsibility of rearing a family. She may not be responsible enough or mature enough to cope with the demands that normally go with a marriage. This situation can become grave and it may later lead to animosity and eventually to *Talaaq*.

- 3) It is also *Sunnah* for a man who intends to seek a girl's hand in marriage, to see that he proposes to a woman who possesses *Deen*. When we say she must be religiously inclined, we mean that she must possess the quality of honesty and trust. On this our Holy Prophet *Muhammad* S.A.W has said :-

"A woman is married for four reasons; for her money, her family lineage, her beauty and her religion. Choose the one who possesses *Deen* otherwise you will have your hands smeared in mud." (meaning

تُنَكِّحُ الْمَرْأَةَ لِأَرْبَعٍ، لِمَالِهَا
وَلِحَسَبِهَا وَلِحَمَلِهَا وَلِدِينِهَا
فَإِظْفَرٌ بِذَاتِ الدِّينِ تَرَبَّتْ يَدَاكَ

رواه البخارى ومسلم وأبو داود والنسائى وابن ماجه

you will have an abundance of problems)

- 4) The man must try at least to propose to a woman who has a fair amount of beauty. This will also trigger off love and affection.

The *Nabiy* S.A.W. has said:

"The world is an object of delight, and the best pleasure of this world, is an uprighteous woman."

الدُّنْيَا مَتَاعٌ وَخَيْرُ مَتَاعٍ
الدُّنْيَا الْمَرْأَةُ الصَّالِحَةُ

رواه مسلم والنسائى وابن ماجه

N.B. When a man is aware that a certain woman happens to be very beautiful and he desires to marry her, but, he also knows there is someone else who wishes to propose to her as well, and who is better equipped to support her with everything required, while she is used to having whatever she desires, then it will not be *Jaa-iz* for such a person to marry her. Others say it is *Makrooh* to marry such a beautiful woman who is used to getting whatever she desires because such a man may be deceived by her beauty and charm and will later not be able to control her defiance.

- 5) It is also *Sunnah* for a man to marry a woman who is fertile. A barren woman will not be able to fulfil her role of procreation. A means of judging whether a woman is possibly fertile is to look at her sister's progeny. A positive indication would mean that she stands a good chance of being fertile.

- 6) It is also *Sunnah* for a man to marry a woman whose ancestry is linked with that of the *Ulamaa'* and the *Saaliheen*. This is so because the children of the *Ulamaa'* who put their knowledge into practice will be well reared

in education, Adab (culture) and Akhlaaq (morals). On this the Nabiyy S.A.W. has said:

"Beware of the green dung. A beautiful woman growing up wickedly, in a house infested by evil."

إِيَّاكُمْ وَخَضِرَاءَ الدِّمَنِ
الْمَرْأَةُ الْحَسَنَاءُ فِي الْمَنْبِتِ السَّوِّءِ

رواه أبو داود

- 7) It is *Sunnah* for the person who is seeking the woman's hand in marriage to deliver two *Khutbahs* (sermons). One *Khutbah* at the time of proposing (the engagement ceremony) and the other before the *Aqd* is put into effect. It is also *Sunnah* for the *Waliy* to *Khutbah* when replying to the proposal. *Khutbah* signifies a speech that starts with *Alhamdu Lillah* and end of with a *Doa*.

Note : There are certain people who are under the false impression that an engagement ceremony is Un-Islamic. This is not so. Sufficient as proof will be a statement made by the Holy Prophet S.A.W.

"Abdullah Bin Umar said :

"The Nabiyy S.A.W. forbade that merchandise be bought by one which has already been bought by someone else among you, and no man should seek the hand in marriage of a woman whose hand has already been sought by someone else before him, unless the suitor abandons her or the suitor grants him permission to do so.

عَنِ ابْنِ عُمَرَ كَانَ يَقُولُ، نَهَى النَّبِيُّ
(صلى الله عليه وسلم) أَنْ يَبْعَ بَعْضُكُمْ عَلَى
بَيْعِ بَعْضٍ وَلَا يَخْطُبَ الرَّجُلُ
عَلَى خِطْبَةِ أَخِيهِ حَتَّى يَتْرَكَ
الْخَاطِبُ قَبْلَهُ أَوْ يَأْذَنَ لَهُ
الْخَاطِبُ

رواه مسلم

It is thus *Sunnah* to have engagements so that people can be aware which girl's hand in marriage has already been sought. However, if it is known that the girl is not satisfied with her suitor, or that she has no confidence in her suitor, then **one may then seek her hand in marriage.**

Protecting each others Amaanah (Trust)

This is a cardinal point to be observed at all times in order to establish a successful relationship in marriage. The *Sharee-ah* teaches us that we are all shepherds and our duty is to protect whatever Allah has entrusted to us. The husband is the shepherd of his wife and children and as such is answerable to Allah for them. On the other hand, the wife is the shepherdess of the children and her husband's wealth and possessions during his absence. Allah will question her hereto.

She must remember and at all times be aware that under no circumstances is she allowed to give away any of her husband's possessions without his prior permission, be it even to her family or his.

One of the most important *Amaanah's* between husband and wife are the personal secrets they share. **That must be guarded.** Saydunaa Aboo Sa-eed Al Khudriy says: "The Nabiyy S.A.W. has said:

"One of the greatest entrustments by Allah on the Day of Judgement (which will be questioned) is the man who opened up to his wife and she

إِنَّ مِنْ أَعْظَمِ الْأَمَانَةِ عِنْدَ اللَّهِ
يَوْمَ الْقِيَامَةِ الرَّجُلُ يُفْضِي إِلَى
امْرَأَتِهِ وَتُفْضِي إِلَيْهِ ثُمَّ يَنْشُرُ

opened up to him whereafter
he publicised her secrets."

رواه مسلم

What is Allowed by the Sharee-ah Concerning Sexual Intercourse?

It is to be remembered that no married woman is allowed to refuse sexual relations to her husband even though she may be busy doing her house chores. This is a right unto a man. She may however refuse his attentions when:

- It is *Salaah* time and only sufficient time is left to complete a full *Fard Salaah*.
- To observe a *Sunnah* or *Quadaa-an* fast without his permission. Note; even for the *Quadaa-an Fard* fasting, the woman requires the husband's permission especially if there is more than sufficient time left over for her to do it. But, if for arguments sake, she has three days *Quadaa'* to perform and there are only three days left before the start of *Ramadaan*, then she **does not need the husband's permission now to complete it**. Any sex during these three days will be designated as *Haraam*.
- She is in *Hayd*, *Nifaas* or recuperating from a gynaecological operation or even any other ailment where a physician of repute clearly instruct her to refrain from sex.
- The husband wants her to indulge in an unnatural sex act which is condemned by the *Sharee-ah*. The following questions now comes to mind. Is one allowed to have

سِرِّهَا

sexual relations in any position? The answer is to be found in a text of this *Hadeeth*. *Sayduna Jaabir* reports :

"That the Jews used to say : "If a woman is approached from behind into her vagina and she becomes pregnant, then her child will be cross-eyed." He said: "The verse was then revealed" "Your womenfolk are like a plantation to you, so go unto your plantation however you choose."

Suratul Baquarah (Verse 222)

This verse indicates that we are allowed to enjoy orgasm in any way as long as it is condoned by the *Sharee-ah*. Remember, we are not allowed to indulge in anal sex. This is totally *Haraam*. The person who indulges in anal sex is cursed by Allah and the Angels. Therefore, a husband who forces his wife to have sex with him while she menstruates, or while she is experiencing her *Nifaas* or through the anus, then the wife has the right to approach a *Haakim* who will them *Fasakh* her marriage providing that her testimony is proved correct beyond any dispute.

Allah says in the Holy Qur'an :

"And verily Allah is not ashamed of the truth."

Suratul Ahzaab (verse 53)

So womenfolk must not be ashamed to approach a *Haakim* (in our country a reputable *Aalim* who takes the place of a *Haakim* under conditions of necessity) when Allah's laws are being vio-

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ أَنَّ الْيَهُودَ
كَانَتْ تَقُولُ، إِذَا أُتِيَتْ الْمَرْأَةُ
مِنْ دُبْرِهَا فِي قُبُلِهَا ثُمَّ حَمَلَتْ
كَانَ وَلَدُهَا أُخْوَلَ قَالَ فَأُنْزِلَ
نِسَاءَكُمْ حَرَتْ لَكُمْ فَأَتُوا
حَرَئِكُمْ أَنِّي شَيْئٌ

وَاللَّهُ لَا يَسْتَحْيِي مِنَ
الْحَقِّ

lated by a husband who behaves like an animal or even worse.
N.B. Oral sex is totally Haraam by the Sharee-ah. Allah says:-

"And success to those who protect their private parts except against their wives or that which their right hand possesses. Truly they shall certainly not be blamed there. But for those whose desires exceed beyond these limits, are transgressors."

وَالَّذِينَ هُمْ لِأُفْرُوجِهِمْ حَافِظُونَ
 إِلَّا عَلَى أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ
 أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ،
 فَمَنْ ابْتَغَى وَرَاءَ ذَلِكَ
 فَأُولَئِكَ هُمُ الْعَادُونَ

Suratul Mu'minoon (verse 4)

From the above verse Allah teaches us that He has made sex Halaal for us to enjoy, but, in the natural way. Any unnatural form of sex is regarded as Haraam by the Sharee-ah. This includes acts of Lesbianism and Homosexuality. In Suratus Shu-a-raa' (verse 165-166) Allah says:-

"Do you go unto menfolk from among the Creation and you abandon that which your Cherisher had Created for you in your wives? Nay: you are a group of people who transgress."

أَتَأْتُونَ الذُّكْرَانَ مِنَ الْعَالَمِينَ
 وَتَذَرُونَ مَا خَلَقَ رَبُّكُمْ مِنْ
 أَزْوَاجِكُمْ بَلْ أَنْتُمْ قَوْمٌ
 عَادُونَ

This verse was revealed to the Nabiy S.A.W. notifying him of the people of Nabiy Loot Alayhis Salaam (Lot). Remember how Allah destroyed his people? Today we have Sodom and Gomora all over again. When the Balaa' of Allah comes, it is going to come unto all "O Allah; protect us and let us die as true and firm believers of Thine Faith. Make us proud believers of Thine Deen and

make Thine Deen dearer to us than ourselves, our children, our wives, our wealth and make Thine Deen dearer to us even over ice cold water on an extremely hot day, Ameen.

Allah regards such people as **transgressors** and in another verse they are called **Qoumum Mufsideen** قوم مفسدين (A people who do evil). Lesbianism is Haraam on the basis of Qiyaas قياس (comparison). **We Muslims should beware and should not fall foul against the evil mischief and filth perpetrated by those who do not possess a seed of faith in them and who neither possess any shame.**

Violence in Marriage

Beating of any type in marriage are branded as Haraam by the Sharee-ah. Legally, no man or his wife has the right to incur physical injury to either party. It is indeed unfortunate that many wives are unaware of their rights as defined by the Sharee-ah, with the result that they endure beatings and physical violence in order to protect the family as a unit.

Muslims should guard against perpetrating such actions in front of family members especially children. Parents should be very wary of the fact that children grow up thinking that this way of life is to be an accepted norm and they may in future perpetuate such violent actions. It is also worthy to note that even under extreme provocation, not to revert to violence which might lead to the perpetrator being charged with assault to do grievous bodily harm.

Although the Sharee-ah states that no woman is allowed to leave her home without the husband's permission, she is however

allowed to leave her home in this instance without fear that she might lose her rights as afforded to her by the *Sharee-ah*.

If this continues, the *Haakim* then *Fasakhs* such a marriage. Let us find out what Allah has to say on this matter:

"As for those women whom you fear disobedience and disloyalty, admonish them. Thereafter refuse to bed with them. And lastly beat them lightly."

وَلْيَنبَغِ تَخَافُونَ نُشُوزَهُنَّ
فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي
الْمَضَاجِعِ وَاضْرِبُوهُنَّ

Suratun Nisaa' (verse 34)

In analysing this verse, Allah firstly wants us to admonish them (not demolish them) and not to beat first and then talk afterwards. Impress upon her the punishment of the Hereafter and its dangers. In some other instances refrain from buying her the things she loves and is used to getting in order that she may be taught a lesson. All in all an intelligent man will never be short of admonishments to guide his wife through the trial life of marriage.

Only if admonishment has no effect on the wife, does one go into the second clause of the verse which teaches us to refrain from sharing our beds with them. This will cause the wife and her husband who are both now lying separately from each other, to reflect over their mistakes. Here the husband may just even refuse to speak to her to show her his extreme disappointment in her.

Should this also result in failure, then beat them lightly. Allah says: "*Wadriboo Hunn*" (Beat them lightly). The Holy Prophet S.A.W. makes it clear what degree of punishment it should be He

said:-

"A light beating." (Leaving no marks or scars).

Here Allah wants the woman to realise, the extent to which she has caused her husband harm. In essence he is now justified to scourge her.

The next step would be to *Talaaq* her if she persists in being disobedient. Here the husband too, is taught to control his temper and not to violently assault his wife, but, to use restraint. Allah further says:-

"That both the husband and wife hold their marriage together with fairness or they separate in kindness and understanding."

فَإِمْسَاكَ بِمَعْرُوفٍ أَوْ
تَسْرِيحٍ بِإِحْسَانٍ

Suratul Baquarah (Verse 229)

Thus to continue to assault a wife will never bring about separation in kindness as the Almighty commands but separation in hate. The *Nabiy* S.A.W. has said:-

"Will any among you beat his wife like a slave is beaten, and then at the end of the day, he beds with her?"

أَيَضْرِبُ أَحَدُكُمْ امْرَأَتَهُ كَمَا
يُضْرَبُ الْعَبْدُ ثُمَّ يُضَاجِعُهَا فِي
آخِرِ الْيَوْمِ؟

In other words the *Nabiy* S.A.W. shows his disgust towards such a person. Further on in the verse Allah says:-

"If they obey you, then seek no way against them to harm them."

فَإِنْ أَطَعَكُمْ فَلَا تَبْغُوا عَلَيْهِمْ
سَبِيلًا

Does Both Partners have Equal Rights in Marriage or Not?

Allah says in the Holy Qur'an:-

"Men are the protectors and custodians of women because Allah has given the one more strength than the other, and because they have to support them from their means. Therefore, the righteous women are devoutly obedient, and they faithfully guard their husbands possession in his absence (as well as in secret) all that which Allah wishes of them to guard."

Suratun Nisaa' (Verse 34)

This verse makes it quite clear than men are superior to women physically. He also engages in war in defence of what is rightfully his or for that of his country. He also provides for his wife as well as protects her. The woman fulfils her role of motherhood.

Therefore, if a man obeys Allah's commandments, then the woman must obey her husband in every respect. But of a man transgresses Allah's boundaries then the woman **must not obey her husband** if he wants her to do likewise.

Allah further says :-

"And women shall have rights

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الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا

فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ

وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ

فَالصَّالِحَاتُ قَانِتَاتٌ حَافِظَاتٌ

لِلْغَيْبِ بِمَا حَفِظَ اللَّهُ

وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ

similar to the rights against them in justice, but men have a degree over them."

Suratul Baquarah (Verse 28)

This advantage is because the man has a duty of support to his wife and not vice versa. So, if this duty is not observed, then the woman could go to a *Haakim*, state her case, and such a marriage is *Fasakhd* if her testimony is found to be sound.

Thus, the righteous woman will even protect herself in her husband's absence from committing adultery and she will not divulge any secrets shared between them and at all times uphold his honour and integrity. Sayduna Aboo Hurairah has said "That the Nabi S.A.W. once said:-

"The best of women is she, who when you look at her, she makes you happy (because it is to her husband to whom she displays her ornaments/body), and if you instruct her with something, she obeys you, and when you are absent from her, then she protects herself and your possessions."

رواه الترمذی

We now know what type of womenfolk we should choose for marriage. But what caliber of man, must a parent look for when a daughter's hand in marriage is being sought? The Nabi made it quite clear when he said :-

"When a man comes to you seeking your daughter's hand

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بِالْمَعْرُوفِ وَلِلرِّجَالِ
عَلَيْهِنَّ دَرَجَةٌ

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ
قَالَ رَسُولُ اللَّهِ (صلى الله عليه وسلم) خَيْرُ
النِّسَاءِ الَّتِي إِذَا نَظَرْتَ إِلَيْهَا
سَرَّتْكَ وَإِذَا أَمَرْتَهَا أَطَاعَتْكَ
وَإِذَا غَبَتْ عَنْهَا حَفِظْتَكَ فِي
مَالِكَ وَنَفْسِهَا

إِذَا خَطَبَ إِلَيْكُمْ مَنْ تَرْضَوْنَ

in marriage, and you are satisfied that he is sound in religion and in character, then let them get married. Should you fail to do so, you will be the cause of dissention and discord being sown on this earth and extensive evil."

دِينُهُ وَخُلُقُهُ فَزَوِّجُوهُ
إِلَّا تَفْعَلُوهُ تَكُنْ فِتْنَةٌ
فِي الْأَرْضِ وَفَسَادٌ عَرِيشٌ

رواه الترمذی

The Nabi S.A.W. explains what characteristics a person should have and what attributes must be looked at. Firstly, soundness in religious beliefs. He must be one that has no foreign ideas or ideologies which are basically unacceptable in *Islam*. He must be proud of his *Deen* and his character should compliment his beliefs. A father must observe the manner in which the suitor acts towards his *Deen* and if this is satisfactory, then he looks, secondly, at such a person's moral conduct. Here one investigates whether he lives righteously. We look at how he earns his money and how he spends it and whether he has a profession or trade which is *Halaal* or *Haraam*.

Should we find his character to be satisfactory, then we have no reason to deny such a person one's daughter's hand in marriage. It is unfortunate that the majority of Muslims look towards some material things than that which the Holy Prophet Muhammad S.A.W. instructs us to look for. We, for instance, look towards creed, nationality, colour, beauty and in many cases wealth.

We at times threaten our children should they marry persons who conform to what the Nabi S.A.W. had stipulated but who do not suit our fancies. At other times our children are even being disinherited by us simply, because, they had chosen as husbands men who hail from a poor or average family although pious. While we wanted them to marry a son of a family who perhaps

hail from the very same village as we do. Then too, we claim that we have the most perfect religion. How beautiful the Messenger of Allah portrayed this when he said during his sermon at Meenaa, the second day of Tashreeq:-

يَا أَيُّهَا النَّاسُ أَلَا إِنَّ رَبَّكُمْ

وَاحِدٌ، وَإِنَّ أَبَاكُمْ وَاحِدٌ

أَلَا لَأَفْضَلُ لِعَرَبِيٍّ عَلَى عَجَمِيٍّ

وَلَا لِعَجَمِيٍّ عَلَى عَرَبِيٍّ، وَلَا

لِأَسْوَدٍ عَلَى أَحْمَرَ وَلَا لِأَحْمَرَ

عَلَى أَسْوَدٍ إِلَّا بِالتَّقْوَى

أَلَا هَلْ بَلَغْتُ؟ قَالُوا نَعَمْ

قَالَ فَلْيُبَلِّغِ الشَّاهِدَ الْغَائِبَ

"O people! Truly your Cherisher is One. And your father is one. Truly, there is no superiority of an Arab over a Non-Arab and neither is a foreigner superior over an Arab. A black skinned man is not superior over a red skinned man and neither is a red skinned man superior over a black skinned man, except through piety. (He further said) "Truly O people, have I conveyed the message?" They said: "Yes" The Prophet S.A.W. said: "Let he who is present here (today) convey this to those absent."

رواه الطبري

The Khutbah When a Marriage Ceremony Takes Place.

"All praise is due to Allah, We praise Him and we seek His Assistance. We seek His forgiveness and we seek refuge in Him from the evil of our inner

الْحَمْدُ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ
وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللَّهِ

مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ

selves (souls) and from the evil of our bad deeds. Whosoever the Almighty Guideth aright, none can lead astray. And whomsoever Allah leadeth astray, none can guide him. I bear witness that there is none worthy of worship but Allah. He is one and has no partner. And I bear witness that Muhammad S.A.W. is Allah's servant and Messenger. Allah has sent him with the truth as a **warn**er and a **bringer** of good news between now and the **Fi-nal Hour**. Whosoever obeys Allah and the Messenger, he is forthright and whosoever disobeys Him, then truly he harms none but himself and does not harm Allah in the least. Allah has said : "O ye who believe Fear your Cherisher who Created you and from one soul and Created its mate (from the same substance) and caused many men and women to be spread from that relationship. And be conscious of Allah who will question you with this (relationship) and your relationship

أَعْمَالِنَا، مَنْ يَهْدِيَ اللَّهُ فَلَا مُضِلَّ لَهُ، وَمَنْ يَضِلَّ فَلَا هَادِيَ لَهُ، أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَحْدَهُ لَا شَرِيكَ لَهُ، وَأَشْهَدُ أَنَّ سَيِّدَنَا وَمَوْلَانَا مُحَمَّدًا عَبْدَهُ وَرَسُولَهُ، أَرْسَلَهُ اللَّهُ بِالْحَقِّ بَشِيرًا وَنَذِيرًا تَيْنَ يَدَيِ النَّسَاءَةِ مَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ رَشَدَ، وَمَنْ يَعْصِهِ فَإِنَّهُ لَا يَضُرُّ إِلَّا نَفْسَهُ وَلَا يَضُرُّ اللَّهَ شَيْئًا، قَالَ تَعَالَى، يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً، وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ،

with your families. For verily Allah is forever watching over you. "And Allah says : O ye who believe, fear Allah as he should be feared and die not, but as true submitters." And Allah says: "O ye who believe, Fear Allah and speak righteously, He will make good your deeds and will forgive your sins. For whosoever obeys Allah and His Apostle, he has indeed succeeded with tremendous success." The Holy Prophet has said: "Who-soever the Almighty has provided with an uprighteous (Saalih) woman, then he has been assisted with half his religion. Let him fear Allah with the other half (by living a righteous life with her)".

And the Nabiy S.A.W. has also said: "O young men! Whosoever of you feels that he is capable of having a woman, let him get married. For marriage will cause him to lower his gaze and protect his private parts. And those not capable to support a woman, let him observe fast, for fasting

إِنَّ اللَّهَ كَانَ عَلَيْنَا رَقِيبًا، وَقَالَ تَعَالَى، يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ حَقَّ تَقَاتِهِ وَلَا تَمُوتُنَّ إِلَّا وَأَنْتُمْ مُسْلِمُونَ، وَقَالَ تَعَالَى، يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَقُولُوا قَوْلًا سَدِيدًا يُصْلِحْ لَكُمْ أَعْمَالَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ، وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ فَقَدْ فَازَ فَوْزًا عَظِيمًا، قَالَ النَّبِيُّ (صلى الله عليه وسلم) مَنْ رَزَقَهُ اللَّهُ امْرَأَةً صَالِحَةً فَقَدْ أَعَانَهُ عَلَى شَطْرِ دِينِهِ، فَلْيَتَّقِ اللَّهَ فِي شَطْرِ الْبَاقِي، وَقَالَ عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ، يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ مِنْكُمْ الْبَاءَةَ فَلْيَتَزَوَّجْ، فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ

فَإِنَّهُ أَغْضُ لِلْبَصَرِ وَأَحْصَنُ لِلْفَرْجِ

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would be to him as though his sexual needs have been suppressed". I have made this statement of mine, and I (now) seek forgiveness from Allah for myself and for you, for my parents and your parents and I seek forgiveness for all the believing men and women. O Muslims! Seek therefore forgiveness, for verily Allah is the Most Merciful, Most Compassionate".

وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ
فَإِنَّهُ لَهُ وَجَاءٌ أَقُولُ قَوْلِي
هَذَا وَأَسْتَغْفِرُ اللَّهَ الْعَظِيمَ لِي
وَلَكُمْ، وَلِوَالِدَيَّ وَلِلدِّينِ
وَلِسَائِرِ الْمُسْلِمِينَ وَالْمُسْلِمَاتِ
وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ
فَأَسْتَغْفِرُوهُ، إِنَّهُ هُوَ الْغَفُورُ الرَّحِيمُ

AL HAMDULIL LAAHI NAHMADUHO WA NAS TA EENUHOO, WA NAS TAGFIRU HOO, WA NA OOTHU BIL LAAHI MIN SHUROORI ANFUSINA, WAMIN SAY YI AATIA 'MAALINAA. MAY YAH DIL LAAHU FALAA MUDIL LA LAH, WAMAY YUDLIL FALAA HAADIYA LAH. ASH HADU AN LAA ILAAHA ILLAL LAAHU WAHDAHOO LAA SHAREEKA LAH. WA ASH HADU AN NA SAY YIDANA WA MOULAANAA MUHAM MADAN ABDUHO WARASOOLUH. AR SALAHUL LAAHU BIL HAQQI BASHEERAN WA NATHEERAM BAYNA YADAYIS SAA-AH. MAY YUTI-IL LAAHA WA RASOOLAHOO FAQUAD RASHAD. WA MAY YA'SIHEE FA IN NAHOO LAYADUR RU ILLAA NAFSAHOO WALAA YADUR RUL LAAHA SHAY-AA. QUAALA TA AALAA. YA AY YUHAN NAASUT TAQOO RAB BAKUMUL LATHEE KHALAQUAKUM MIN NAFSIN WAA HIDATIN. WA KHALAQUA MINHA ZOUWJAHAA WA BATH THA MINHUMAA RJAALAN KATHEERAN WA NISAA-AA. WAT TAQUL LAAWHAL LATHEE TASAA ALOONA BIHEE WAL ARHAAM. IN NAL LAAHA KAANA ALAYKUM RAQEEBAA. WA QUAALA TA-AALAA. YAA AY YUHAL LATHEENA AAMANUT TAQUL LAAHA HAQUA TUQUAATUHEE WALAA TAMOOTUN NA ILLAA WA ANTUM MUSLIMOON. WA QUAALA TA-AALAA. YA AY YUHAL LATHEENA AAMANUT TAQUL LAAWHA WA QOOLOO QOULAN SADEEDAA. YUSLIH

LAKUM A'MAALAKUM WA YAGHFIR LAKUM THUNOOLAKUM. WA MAY YUTI-IL LAAHA WA RASOOLAHOO FAQUAD FAAZA FOUZAN ATHEEMAA. QUAALAN NABIY YU SAL LAL LAAHU ALAYHI WA SAL LAM. MAR RAZAQUA HUL LAAWHUM RA ATAN SAALIHATAN FAQUAD A-AANAHOO ALAA SHATRI DEENIHEE. FAL YAT TAQIL LAAHA FEE SHATRIL BAAQEE. WA QUAALAN ALAY HIS SALAATAL WAS SALAAM. YA MA' SHARASH SHABAAB. MANIS TA TAA-A MINKUMUL BAA ATA FAL YATAZAW WAJ. FA IN NAHOO AGHAD DU LIL BASARI WA AHSANU LIL FARJI. WAMAL LAM YAS TA TI' FA ALAYHI BIS SOUM. FA IN NAHOO LAHOO WIJAA'. AQOOLU QOULEE HA THAA. WA ASTAGHFIRUL LAAH ASTAGH FIRUL LAAH, ASTAGH FIRUL LAAHA ATHEEMA LEE WALAKUM. WA LIWAA LIDAY YA WA WALIDEKUM. WA LISAA IRIL MUSLIMEENA WAL MUSLIMAAT. WAL MU'MINEENA WAL MU'MINAAT. FASTAGHFIROOH. IN NAHOO HUWAL GHAFUORUR RAHEEM.

Note: This *Sunnah* will also be attained before the Aqd when it is recited by the Waliy, the bridegroom or his representative or anyone else.

From this we learn that two *Khutbahs* comes from the side of the bridegroom or anyone who deputises for him and one from the Waliy. This takes place after the proposal when giving answer to the bridegroom or the one who deputises for him.

Note of Importance. Other *Ulamaa'* have added a fourth *Khutbah* between the *Ejeaab* and the *Quabool*. This comes from the husband or his deputy. This is when the Waliy says : "Zaw Wajtuka.....", then it is *Sunnah* after praising Allah with the opening of the *Khutbah* to say:

"AL HAMDULIL LAAHI. WAS SALAATU WAS SALAAMU ALAA RASOOLIL LAAH. SAYYIDINAA MUHAM MADIN WA ALAA AALIHEE WASAHBIHEE WA BAA

الْحَمْدُ لِلَّهِ وَالصَّلَاةُ وَالسَّلَامُ عَلَى
رَسُولِ اللَّهِ، سَيِّدِنَا مُحَمَّدٍ وَعَلَى
آلِهِ وَصَحْبِهِ وَبَارَكَ وَسَلَّمَ، عَلَى بَرَكَةٍ

RIK WA SAL LIM. ALAA BARA
KATIL LAAH. WARAJAA A MU-AW
WANATIHEE QUABILTUZ ZAWAAJ".

Some of the *Ulamaa'* do not prefer this, because, we know that a lengthy pause between the *Eejaab* and the *Quabool* renders the *Aqd* to be *Baatil*. Therefore, the *Ahwat* (best precautionary measure) would be to leave it out.

The Doa After the Marriage

"O Allah! This couple (has entered into the bonds of Holy Matrimony), place love between them as Thou hast placed love and affection between our Father Adam and our mother Eve Peace and Blessings on both of them. And let there be harmony between them as Thou hast placed harmony and affection between Prophet Abraham and his wife Sarah (peace and blessings on them). And put love and affection between them as Thou hast placed love and affection between Prophet Joseph and his wife Zulayghaa' (peace and Blessings upon them). And place

اللَّهُ وَرَجَاءَ مُعَوِّذَتِهِ قَبْلُ الزَّوْاجِ

اللَّهُمَّ إِنَّ هَذَيْنِ الزَّوْجَيْنِ، وَقَفَّ
بَيْنَهُمَا كَمَا وَقَفْتَ بَيْنَ آدَمَ
وَأَمْنَا حَوَاءَ عَلَيْهِمَا الصَّلَاةُ وَالسَّلَامُ،
وَكَمَا وَقَفْتَ بَيْنَ سَيِّدِنَا إِبْرَاهِيمَ
عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ وَسَيِّدَتِنَا
سَارَةَ، وَأَلْفَ بَيْنَهُمَا كَمَا أَلَفْتَ
بَيْنَ سَيِّدِنَا يُوسُفَ الصَّدِّيقِ
وَسَيِّدَتِنَا زُلَيْخَاءَ عَلَيْهِمَا الصَّلَاةُ
وَالسَّلَامُ، اللَّهُمَّ أَلْفَ بَيْنَهُمَا

love and harmony between them like Thou hast placed harmony and affection between our Prophet Muhammad S.A.W. and his wife Khadija R.A.... O Allah! Place love and affection between them in the same way as thou hast placed love and affection between Sittina Fatimah and her husband Sayduna Aliy R.A.. O Allah! Place love, agreement and establishment between them. And do not bring trials, version and separation between them. Bless them and grant them good off-spring. For Truly thou are the Listener of Prayers. O Allah! Grant us wives and off-spring who will be the comfort of our eyes, and give us the Grace to lead a path of righteousness. O Allah! Accept from us our good deeds, for Thou art The Hearer, The All knowing. And accept from us our repentance for thou art The Acceptor of Repentance".

كَمَا أَلَفْتَ بَيْنَ سَيِّدِنَا مُحَمَّدٍ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَسَيِّدَتِنَا
خَدِيجَةَ الْكُبْرَى رَضِيَ اللَّهُ عَنْهَا
وَأَلْفَ بَيْنَهُمَا كَمَا أَلَفْتَ
بَيْنَ سَيِّدَتِنَا فَاطِمَةَ الزَّهْرَاءِ
وَسَيِّدِنَا عَلِيٍّ الْمُرْتَضَى، اللَّهُمَّ
أَلْفَ بَيْنَهُمَا أَلْفَةً وَمَحَبَّةً وَقَرَارًا
وَلَا تَجْعَلْ بَيْنَهُمَا نِفْرَةً أَوْ فِتْنَةً أَوْ
فِرَارًا، وَبَارِكْ لَهُمَا وَارْزُقْهُمَا ذُرِّيَّةً
طَيِّبَةً صَالِحَةً، إِنَّكَ سَمِيعُ الدُّعَاءِ،
رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا قُرَّةَ
أَعْيُنٍ وَاجْعَلْنَا لِلْمُتَّقِينَ إِمَامًا، رَبَّنَا
تَقَبَّلْ مِنَّا إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ
وَتَبَّ عَلَيْنَا إِنَّكَ أَنْتَ التَّوَّابُ الرَّحِيمُ

The Arkaans of Marriage

The Arkaans of the *Nikaah* are five :

- 1) The *Zouwj* زوج (Husband).
- 2) The *Zouwjah* زوجه (Bride)
- 3) The *Waliy* ولي (Representative).
- 4) *Shaahidaan* شاهدان (Two witnesses).
- 5) *Seeghah* صيغة (The form of speech made up of the *Eejaab and Quabool*). We will deal with each and every *Rukun* as we go along the lesson.

The Shuroots of Nikaah

The *Shuroots* of *Nikaah* are sub-divided as follows:

- 1) The *Seeghah*. صيغة
- 2) The *Waliy*. ولي
- 3) The *Zouwjayn*. زَوْجَانِ زَوْجَتَيْنِ
- 4) The *Shaahidayn*. شَاهِدَانِ شَاهِدَتَيْنِ

We will now deal with each and every rule individually.

The Seeghah

This clause has quite a number of rules. These are many, including the thirteen rules of buying and selling. These are :

- 1) The *Khitaab*. This is the verbal communication between the two parties. If for example the one person says to the other: "I have sold this to Zayd", then the contract is *Baatil*. Likewise, the *Waliy* must say to the bridegroom "I have married you O! Yusuf to my daughter Fatima", and not, "I have married Zayd to my daughter" and he is not present.
- 2) That the speaker must address the listener directly such as saying: "I have sold this to you". If he says "I have sold this to your hand", then the *Aqd* is *Baatil*. In the *Aqdun Nikaah*, the *Waliy* must say: *Zaw Wajtuka* not *Zaw Wajtu Yadaka*. This means "I have married thy hand". This is incorrect.
- 3) That the one who initiates the transaction must state what he is selling and at what price. In the *Aqdun Nikaah*, the *Waliy* must state who he is marrying off and it is *Sunnah* to also state at what dowry.
- 4) That both persons must have the intention which coincides with what is being uttered. If these words are uttered without one having the same intention, then the *Aqd* is *Baatil*.
- 5) That there should be no other unrelated utterance or speeches between the *Eejaab* and the *Quabool*.
- 6) There should not be a lengthy pause between the *Eejaab* and the *Quabool* to the extent that one could think or feel

that the other party has rejected the deal.

- 7) That the first person does not change his statement before the acceptance of the other e.g. The seller says: "I have sold this merchandise to you for five Rand", whereafter he says: "No, but for ten Rand", before the buyer could say: "Quabiltu" (I have accepted), then the *Aqd* is *Baatil*. Comparing the buying situation with the *Nikaah*, it must not be that the *Waliy* says: "I have married you to Fatima" whereafter he says: "No, but to Khadeejah" before the *Zouwj* had the time to say: "*Qubiltun Nikaah*". This will render the *Nikaah* as *Baatil*.
- 8) The volume of speech of both parties must be audible to both parties as well as those present. Should it occur that the speech is audible only to the two parties and not to those present i.e. the witnesses, then the *Aqd* too is *Baatil*.
- 9) That the *Eejaab* and the *Quabool* must coincide with the true meaning of the merchandise. If for example the seller says to the buyer: "I have sold you this bag of rice while his *Niyah* is a bag of beans, and the buyer accepts with the idea that it is whole grain rice, then such an *Aqd* is *Baatil*.
- 10) That the *Seeghah* must not be made up of anything that is foreign to the transaction e.g. "I have sold to you this house if so and so wants to or if Allah so Wills". Likewise, in an *Aqdun Nikaah* it must not be said: "I have married my daughter to you O Ahmad if it is Allah's Will and if my father's brother agrees".
- 11) That the contract must not be fixed to a specified time limit e.g. "I have sold this camel of mine to you for a period of one month", and in marriage to say perhaps: "O Fareed, I am marrying my daughter to you now for a period of six

- years". This is *Baatil*.
- 12) That both participants in the contract must address each other. If for example, the seller says to the buyer: "I have sold this merchandise to you for so much and so much" whereupon someone else replies: "I have accepted", then the *Aqd* is *Baatil*.
- 13) That both participants must remain sane until the transaction has been completed e.g. If the seller says: "I have sold this to you for so much and so much" and immediately thereafter becomes insane, even before the buyer could say: "*Quabiltuhoo*", then the *Aqd* is *Baatil*. The same applies to the *Nikaah*.
- 14) That the *Seeghah* must be made of words relating to either *Inkaah* or *Tazweej*. Both these words imply marriage or wedlock.

EXAMPLE

"O Muhammad, I have married my daughter to you"

يَا مُحَمَّدُ زَوَّجْتُكِ ابْنَتِي (فاطمة) or, "I have married you to the woman I was made representative of".

زَوَّجْتُكَ مُوَكَّلَتِي (فاطمة)

Note : If a person says : "I am marrying my daughter Fatima to you" in the imperfect form, then the *Aqd* will be *Baatil*, because, such form of speech has a bearing of a promise. However if the person says:

أُزَوِّجُكِ ابْنَتِي فَاطِمَةَ

"I let you marry my daughter Fatima now" أَزَوِّجُكِ ابْنَتِي فَاطِمَةَ الْآنَ then it is correct. Similarly, if the person uses the term in the

active participle such as saying: *إِنِّي مُزَوِّجُكَ ابْنَتِي فَاطِمَةَ*

"I am letting you marry my daughter" *Innee Muzaw Wijuka Ibantee Faatimah*, then no harm is done and the contract is regarded as *Sah*.

The *Aqd* will also be regarded as *Sah* if it is uttered in corrupted words, even though the words uttered is not regarded as language. Example *Jaw Waztuka Bintee Fatimah* *جَزَزْتُكَ بِبْنِي فَاطِمَةَ* which means to those who understand Arabic the very same as it is spoken correctly.

- 15) There must not be any provision in the *Aqd* e.g. "I have married you to my daughter Fatimah if you give me such and such a house, or "I have married you to my daughter Fatimah if I find you to be acceptable and able".

The *Aqd* will also be correct if the *Seeghah* was uttered in Non Arabic even though the parties entering the contract understand Arabic. Herewith lies a rule which is, that they must understand what is being said. If for example the person says in English, German, French or any other language (which is understood) by the parties involved "I have married you to my daughter Fatimah", whereafter the person says: "I have accepted this marriage", then it would be regarded as *Sah* provided that whatever was said, **must be said in the past tense as to indicate that something has taken place.**

If the person says: "Marry me to your daughter Fatima" *زَوِّجْنِي ابْنَتَكَ* whereby the *Waliy* says: "I have married you to her", *زَوَّجْتُكَ ابْنَتَهَا* then it will be regarded as *Sah*. Similarly, if the father says to a suitor: "Marry my daughter Fatimah" *زَوِّجْ ابْنَتِي فَاطِمَةَ* whereby the suitor answers: "I have married her" *زَوَّجْتُهَا* then the *Aqd* in this instance will also be considered as *Sah*.

The *Nikaah* would be incorrect if it is uttered in any other forms of speech not mentioned above. It is thus *Baatil* if the following types of utterances are used for this purpose namely:

1) "I have made my daughter Halaal for you".

2) "I have sold my daughter to you".

3) "I have now caused thee to own my daughter".

4) "I have given my daughter to you as a present".

أَخْلَلْتُ لَكَ ابْنَتِي

بِعْتُكَ ابْنَتِي

مَلَكَتُكَ ابْنَتِي

وَهَبْتُ ابْنَتِي إِلَيْكَ

You have learnt before that it is necessary that the word binding the *Aqd* must be made up of words depicting marriage/wedlock (*Inkaah* or *Tazweej*) because, *Imaam Shafi-iy* bases his argument upon the *Hadeeth* which goes as follows:

"And their private parts have been made Halaal for you through the word of Allah".

وَأَسْتَحْلَلْتُمْ فُرُوجَهُنَّ

أَخْرَجَهُ الشَّافِعِيُّ

بِكَلِمَةِ اللَّهِ

When going through the pages of the Holy Qur'an, the reader will find no other word describing marriage but either *Inkaah* or *Tazweej*.

It is also necessary that the *Seeghah* must be pronounced in the *Sareeh* (direct) form and not in the *Kinaayah* (indirect) form. This is so because, the *Kinaayah* form requires an intention and we have two witnesses who must bear testimony of a contract having taken place. It is thus *Waajib* that clarity should be ascertained by them in every respect bearing their testimony. A person's *Niyah* brings no clarity to the witnesses.

The Form of Speech to be Made by the Waliy or His Deputy

"ALLAWHUM MA SAL LIM ALAA
SAY YIDINAA MUHAMMADIN WA
ALAA AALI SAY YIDINAA
MUHAMMADIN WA AS-HAABI HE
WA BAARIK WA SAL LIM. YA
MUHAMMAD. UZAW WIJUKA
ALAA MAA AMARAL LAAWHU TA-
AALAA MIN IMSAAKIM
BIMA'ROOFIN OU TASREEHIM BI-
IHSAAN. ZAW WAJTUKA
MAKHTOOBATAKA FATIMAH
IBNATA ISMAA-EEL ALAA MAA
TARAA DAYTUM BIHEE MINAS
SADAAQ. WA QUADRU HOO
ASHRATU RAND".

"O Allah, send blessings upon Muhammad S.A.W. and upon the family of Sayduna Muhammad. And Bless the family and the Companions and place thine Peace on them. O Muhammad (or whatever the bridegroom's name is), I am herewith marrying you as Allah has commanded that both husband and wife hold their marriage together in justice and fairness or separate in kindness and understanding. I have now placed you under wedlock and am marrying you to Fatimah the daughter of Ismaa-eel upon the dowry which you both agreed upon amounting to ten rand".

Utterances Which Could be Used by the Zouwj

QUABILTU ZAWAA JAHAA

"I have accepted this marriage to her"

QUABILT NIKA-HA-HAA

"I have accepted this marriage to her"

QUABILTUN NIKAAH

"I have accepted this marriage"

QUABILTUT TAZ WEEJ

"I have accepted this wedlock"

RADEETUN NIKAAH

"I have been satisfied with the marriage"

AHBABTUHOO

"I have been desirable to (accept) it"

ARAD TUHOO

"I have wanted this" (indicating that the person was looking forward to have accepted this marriage).

.If the person merely says: Quabiltu "I have accepted", then the Nikaah is Baatil. Remember, that there must be reference as to what is being accepted. Thus, the word "it" or "That" refers to the marriage that is being accepted. It would also be correct to place the Quabool ahead of the Eejab.

قَبِلْتُ زَوَاجَهَا

قَبِلْتُ نِكَاحَهَا

قَبِلْتُ النِّكَاحَ

قَبِلْتُ التَّزْوِيجَ

رَضِيتُ النِّكَاحَ

أَحْبَبْتُهُ

أَرَدْتُهُ

The Doa to be Made Immediately After the Aqd has been Solemnized

It is *Sunnah* when an *Aqd* had been completely contracted, that those present utter a Doa for both the bride and bridegroom saying:-

"BAARAKAL LAAHU LAKA WA
BAARAKA ALAYK. WA JAMA A
BAYNAKUMA FIL KHAYR".

بَارَكَ اللَّهُ لَكَ وَبَارَكَ عَلَيْكَ
وَجَمَعَ بَيْنَكُمَا فِي الْخَيْرِ

رواه الترمذی

"May Allah bless you, and May His blessings be upon you, and may Allah bring both of you together in goodness".

This form of speech has been said by the Holy Prophet himself when he blessed a couple at their wedding ceremony.

The Doa to be Made by the Husband when He Has Sexual Relations with His Wife

Sayduna Abdullah Bin Abbaas said: "The *Nabiy* S.A.W. has said:

"If any one of you when having sexual intercourse with his wife says: BISMILLAAH ALLAHUM MA JAN NIB NISH SHAYTAAN. WA JAN NIBISH SAHYTANA MA RAZAQ TANAA" And if it is destined that they should have a child, then the Shaytaan will never harm him:

رواه البخاری

أَمَّا لَوْ أَنَّ أَحَدَكُمْ يَقُولُ حِينَ يَأْتِي
أَهْلَهُ، بِسْمِ اللَّهِ، اللَّهُمَّ جَنِّبْنِي
الشَّيْطَانَ وَجَنِّبِ الشَّيْطَانَ مَا رَزَقْتَنَا،
ثُمَّ قُدِّرَ بَيْنَهُمَا فِي ذَلِكَ، أَوْ قُضِيَ وَلَدٌ
لَمْ يَضُرَّهُ شَيْطَانٌ أَبَدًا

The Shuroots Relating to the Waliy

These rules are ten and they are as follows:

- 1) That the *Waliy* must have choice of option. It would be wrong if a marriage is performed whereby the *Waliy* is being coerced to solemnize the *Aqd*.
- 2) That the *Waliy* be a male. The marriage is incorrect if it is being solemnized by either a female or a hermaphrodite.
- 3) That the *Waliy* should not be bound to deeds pertaining to the *Ihraam*. This signifies the situation where the *Waliy* has made his intention to enter into the deeds of the *Haj* or *Umrah* or both.
- 4) That the *Waliy* be *Mukallaf/Baaligh*.
- 5) That the *Waliy* be in full possession of his mental faculties. An insane person may not be a *Waliy*.
- 6) That the *Waliy* be truthful and honest. A *Faasiq* (sinner) may not be a *Waliy* unless he repents (before the *Aqd* takes effect).
- 7) He must not be one placed under curatorship or because he is silly or foolish.
- 8) He must not be a person incapable of choosing a partner himself.
- 9) He must not be a person outside of the fold of *Islaam*.
- 10) He should not be a slave.

The Rules Pertaining to the Zouwj

These are as follows:

- 1) That the person to be married should not be one who happens to be *Haraam* in that he and she could not be joined in wedlock because, he is a brother or uncle to her. Any relationship through *Nasab* (family lineage), *Radaa'* (foster relationship) or *Musaaharah* (family relationship through marriage) is *Haraam*.
- 2) That the husband should not be forced into the marriage against his will.
- 3) That the husband to be must be a person who is known. The *Nikaah* will be regarded as null and void if a marriage is contracted while the husband to be is unknown.
- 4) That the man should know what the condition of his wife to be is. Certainty must be established as to whether she is *Halaal* to marry.

The Rules Pertaining to the Wife to be

These are as follows:

- 1) She must not be *Haraam* for him due to *Nasab* نَسَب *Musaaharah* مُصَاهَرَة or *Radaa'* رَضَاع.
- 2) She must not be the wife of someone else not having been divorced yet.
- 3) She must be known to her husband to be.

- 4) She must not be under *Iddah* of any form.

The Shuroots Governing the Shaahidayn

These are as follows:

- 1) They must not be slaves.
- 2) They must not be *Faasiqs*.
- 3) They must not be deaf.
- 4) They must not be blind.
- 5) They must not be hermephrodites.
- 6) They must not be women.
- 7) If it happens that the person has the right to be a *Waliy*, but he gave over his representation to someone else, while he (the *Waliy* who gave over his representation) presents himself at the marriage, then it would not be correct for such a *Waliy* to now take on the portfolio of witness, to the *Aqd*. Although such a *Waliy* possesses the qualities of a witness, it is still wrong, because, in actual fact, although the *Waliy* had given his representation over, he is still regarded as the one putting the marriage through. Upon the *Wilaayah* (representation) the *Nabiy* S.A.W. has made the following statement:

"There is no marriage contract except (if it is put through by) a *Waliy* and two honest witnesses. Any contract con-

لَا نِكَاحَ إِلَّا بِوَلِيِّيَّ وَشَاهِدَيْنِ عَدْلٍ
وَمَا كَانَ مِنْ نِكَاحٍ عَلَى غَيْرِ ذَلِكَ

tracted differently to what is described is Baatil".

رواه ابن حبان وغيره

فَهَوَّ بَاطِلٌ

- 8) It is permissible for both husband and wife to be to take either or any one of their sons as witnesses at their marriage. Such *Nikaah* is designed as *Sah*, but, in the event of a dispute afterwards, the *Haakim* will have no other alternative but to declare such a marriage invalid on the basis that no children of any party may act as witnesses for or against any of them. The same rule applies to a son of an enemy being a witness.

Note : The *Nikaah* will also be considered correct of two reliable and honest witnesses whose honesty are known to be valid outwardly and not inwardly.

Important: It is also *Sunnah* to have two witnesses when a woman gives off her consent to a brother or others to have her married. This is done as a precautionary measure so as not to refute this fact at a later stage especially when the *Waliy* is not a *Waliy Mujbir*.

Summary

Agreements and Disagreements Among the Mathaa-hib

- 1) All three *Imaams* agree that the *Nikaah* is not correct when it denotes a meaning of buying, *Sadaquah* or gift. If a person says: "I have given my daughter to you as a gift" then such a marriage is incorrect. Similarly, a person who marries another's daughter on the basis of making peace or for the purpose of obtaining a loan. *Imaam Aboo Haneefah* however agrees on this.

- Imaams Shafiy-iy* and *Hambaliy* agree that the *Nikaah* is not correct except when the *Seeghahs* are made up of the words *Inkaah* or *Tazweej*. The other two *Imaams* both agree that the *Seeghas* could be made up of *Hibah* (gift).
- 2) All agree that a *Nikaah* is authentic when made in jest. Example; A person says to another: "I have married my daughter Fatima to you now". The person then says: "I have accepted this", whereafter both persons burst out laughing, the *Nikaah* is then valid and likewise a *Talaaq* if two witnesses were present.

Imaams Shafi-iy, *Maalikiy* and *Ahmad Bin Hambal* all agree that no marriage is valid if carried out by coercion. *Aboo Haneefah* however regards such a marriage to be *Sah*, but, stipulates, that if the woman had forced the man to marry her, then she has no right to request dowry before sexual relations has taken place. After the *Watt* however, *Mahrul Mithl* is to be given to the wife.

- 3) All the *A-immah* agree that the *Eejaab* as well as the *Quabool* must be pronounced during the sitting of all present to such an extent, that should the *Waliy* say to the husband to be "I have married you to Fatimah" whereafter the congregation stands up and walk out before the *Quabool* is pronounced, then such an *Aqd* will be *Baatil*, even if the *Zouwj* utters *Quabiltu* at another sitting.

There is however, disagreement amongst the *A-immah* with regard to the *Quabool* being promptly uttered without pause in between the *Eejaab* and the *Quabool*. *Hanafiy* and *Hambaliy* hold the view that the prompt uttering of the *Quabool* after the *Eejaab* is not a rule as long as the gathering is still to be found. However, if all

busy themselves with anything that would nullify the reason for their gathering, then the *Aqd* is incorrect.

Imaams Maalikiy and Shafiy hold the view that the prompt uttering is a rule. However, a very short pause that does not give one the impression that the promptness had been cut off would be forgiven.

- 4) The three *Imaams* all agree that the *Quabool* could be placed before the *Eejaab* e.g. If the husband says to the *Waliy*: "I have accepted the marriage of your daughter Fatimah of so much and so and so much in dower" whereafter the *Waliy* answers: "I have married you to her". Similarly if the husband to be says: "Marry me to your daughter Fatimah" upon which the *Waliy* answers: "I have married you to her", then this will be regarded as correct, because the meaning of "*Zaw Wijnee* (marry me) according to the *Ulamaa'* indicates in actual fact the acceptance of the marriage.

Imaam Hanafiy on the other hand says that whichever precedes the other is called the *Eejaab* irrespective of whether it comes from the *Waliy* or the *Zouwj*. *Imaam Hambaliy* differs saying: "It is necessary that whoever takes the place of the *Waliy* should perform the *Seeghah* the way we normally do it".

- 5) The three *Imaams* agree that it is sufficient for the husband to be to just merely say: "*Quabiltu*" (I have accepted). But *Imaam Muhammad Bin Idrees Ash Shaafi-iy* differs: He holds the opinion that it is necessary that both persons taking part in the transaction must use the direct form of speech saying: *Quabiltuz Zawaaj* (I have accepted this marriage). Saying: "I have accepted" requires clarity. What has been accepted? It cannot and may not

merely be assumed that the *Nikaah* was accepted. Remember, it is necessary that both witnesses be certain that a contract has been definitely transacted.

- 6) All four *Imaams* agree that the marriage contracted for a limited time is *Baatil* and is regarded as adultery i.e. *Nikahul Mut-ah*.

The Witnesses and the Married Couple to be

- 1) All three *A-Immah* agree that two witnesses are necessary when an *Aqdun Nikah* takes place. If two witnesses are not present at the time the *Eejaab* and *Quabool* takes place, then such a contract is *Baatil*.

Imaam Maalikiy says that their presence when the *Aqd* becomes effective is but *Sunnah* especially when there is no one around (i.e. when no Muslims are found in a place leaving them as the only two believers in that locality).

- 2) *Imaams Shaafi-iy* and *Hambaliy* agree that the witnesses should be honest outwardly atleast. If not, the contract is null and void. *Imaam Maalik* again hold the view claiming that if an honest man is found, then well and good, and if not, any person will then do as long as it is openly known that particular person is not known for lying.

All three *Imaams* agree that male witnesses are required for the *Aqd* to be considered as correct. *Imaam Hanafiy* however differs here. He states that honest witnesses are not a pre-requisite at the *Aqd*. If a marriage contract was

contracted without honest witnesses, then the marriage is valid. But, should there be a dispute between the parties, then the testimony of these two witnesses will not hold good in front of the *Haakim*. He also states that one male and two ladies would do. Two ladies alone will not be sufficient for the correctness of an *Aqd*.

- 3) Three *Imaams* agree that a *Muhrim* for *Haj* or *Umrah* or both cannot participate in the solemnizing of the *Aqd*. *Aboo Haneefah* holds the view that it is correct if such a *Muhrim* solemnizes the *Aqd*.

The Definition of the Waliy

The *Waliy* is the representative at the wedding ceremony, since the bride does not take an active part in the ceremony herself. The *Waliy* is a rule for the authenticity (*Shartus Sih-Hah* شرط الصحة) of the performance of a marriage contract. Without the *Waliy*, the *Aqd* is classified as *Baatil*. The following persons have the right to the *wilaayah* (*Waliyship*). They are:

- a) The father.
- b) The father's commissioner.
- c) Paternal male relatives
- d) The slave freed from bondage.
- e) The Governor or King.

I list below the proper sequence (*Tarteeb*) of the lineage that has to be observed in ascertaining the relevant *Waliy*.

This is the form of *tarteeb*.

- a) Father.
- b) Grandfather or Great grandfather etc..

NOTE: If both grandfathers are to be found, the prevelage goes to the one nearest in relation to the girl.

- c) The girls blood brother known as her *Shaqeeq*. شقيق
- d) The girls brother from father's side.
- e) The son of the blood brother.
- f) The son of the brother from father's side.
- g) Her very own blood uncle.
- h) Her uncle from father's side.
- i) The son of her blood uncle.
- j) The son of her uncle from father's side

NOTE : When we speak of uncles, it is meant, the uncle of the girl, the uncle of the father or the uncle of her grandfather.

- k) If any of the above are not to be found, the *Wilaayah* is then transferred to the slave (male) that was freed from bondage.
- l) Relatives of this freed slave (in the order displayed above) if they are to be found.
- m) The *Haakim*.

The Divisions of the Waliy

The Waliy is sub-divided into two categories:

- 1) Waliy Mujbir وَلِيٌّ مُجْبِرٌ
- 2) Waliy Ghayru Mujbir. وَلِيٌّ غَيْرُ مُجْبِرٍ

The Waliy Mujbir

He is the father, grandfather or the Master of a slave. these three persons have the authority and power to marry off a young maiden (*Bikr*-Virgin) without her consent or approval subject to seven rules which would be discusses later.

The Waliy Ghayru Mujbir

This Waliy does not posses the same power and authority like the Waliy Mujbir. Yet, no marriage will be correct if it is carried out without him being present. He is the father, grandfather, master of a slave girl and all the others mentioned in the form of sequence at the top of the page from clause (c) downwards. The above people are all the Waliy of a woman remarrying because of her husband's death or she was divorced. She is called a *Thay-yib* ثَيِّبٌ

NOTE : As far as the Thay-yib is concerned, she must have a Waliy. There are some ill informed people who are under the wrong impression that a woman who was married, does not require a Waliy should she desire to remarry again. She still

does, but, her father or grandfather does not possess that same authority or power which they possessed before when she was a Bikr (virgin). Her contest and approval is Waajib. The Bikr too needs a Waliy when her father or grandfathers are not to be found. Her Waliy now is also termed as The Waliy Ghayru Mujbir.

The Prerogatives of the Waliy Mujbir

The Waliy Mujbir has the following prerogatives in solemnizing certain marriages. These are :-

- 1) To marry a minor boy or girl.
- 2) To marry an insane couple when they are both of marriageable age.
- 3) To marry a sane young girl who is *Baaligh* and who is a *Bikr*. Herewith lies a rule in that such a girl must be a *Bikr* either *Haqeeqatan* (in reality) or in *Hukum* (decree).

Important: A *Bikr* in *Hukum* is a situation where the young maiden has lost her virginity because :

- a) of a disease or through illness.
- b) An injury.
- c) An operation.
- d) Old age.

From the above we learn that the Waliy Mujbir could contract an Aqd without the consent and approval of the *Bikr* subject to the following conditions:

- 1) There should not be any clear animosity or hatred between the *Bikr* and her *Waliy*. If there is animosity between them, but it is concealed then the right of the *Waliy Mujbir* remains in tact.
- 2) There should not be any clear or concealed animosity between the *Bikr* and the husband to be. If there is, then the *Aqd* will be regarded as *Baatil*.
- 3) That the husband should be her *Kuff* كُفٍّ (equal Suitor)
- 4) The husband to be should be a *Moosir*. He is one who can afford to pay her dowry and who is further well equipped to provide for her in every respect as is required by the *Sharee-ah*.

NOTE: The above rule govern the correctness of the *Aqd* taking place. If any of these rules are not complied with by the *Waliy Mujbir*, then the *Aqd* is *Baatil*, unless the girl has given her approval that such a marriage may be performed.

Rules five, six and seven are rules which makes it *Jaa-iz* (permissible) for the *Waliy* to contract the marriage. If these rules are not complied with, then the marriage will still be correct, but the *Waliy Mujbir* will be classified as a sinner.

These rules are:

- 5) That the *Waliy* should marry her off under a dowry known as *Mahrul Mithl* مَهْرُ الْمِثْلِ
- 6) That the dowry should not be in foreign currency.
- 7) That the dowry must be immediately paid in cash form.

If it is customary in a town/village/city that people pay their dowers at a later stage or in a foreign currency, as is being done today in business transactions, then it would be *Jaa-iz* to do so.

Despite these prerogatives which the *Waliy Mujbir* possesses, it will still be *Sunnah* for him to seek her consent and approval in order to give her the satisfaction of using her own free will. This so if she happens to be a *Bikr*, who is sane and *Baaligh* even though she may be slightly intoxicated. This is so on the basis that intoxication does not take the person away from *Takleef* (when one falls under commandment/compulsion of Allah's laws), as long as one is still in possession of one's faculty of reasoning.

Has the *Waliy* who is far down the line in *Tarteeb* the right to marry a girl, when another closer in relationship to the girl is to be found?

The *Tarteeb in Ouliyaa'* (representatives) is a rule that **must be observed**. The *Wilaayah* cannot be transferred to a *Waliy* further down the line. The sequence of *tarteeb* (when others nearer are to be found) is necessary, except during the following circumstances:

- 1) When the *Waliy* nearest in line happens to be a minor boy. In such an instance, it will then be correct for the *Wilaayah* to be transferred to the one next in line.

NOTE: If the minor boy reaches the age of *Buloogh* plus minus fourteen and three quarter lunar years, then it will be correct for him to solemnize the marriage contract as long as he did not commit a crime yet, branding him as a *Faasiq* (sinner) after he had matured. In another words, his right for claiming the *Wilaayah*, remains firm.

However, such a person will not be allowed to be a witness to a marriage contract unless he had grown a year older after becoming *Baaligh*. During this period he should not have committed a crime branding him a *Faasiq*. If he has lived righteous, then by

his righteous way of living he has made his honesty apparent.

Therefore, the difference between the *Wilaayah* and the *Shahaadah* (witnessing) for a boy who has become mature is that as far as witnessing is concerned, must it be proved that he is honest and reliable. But in the case of the *Wilaayah*, it is sufficient to outwardly know that he is not a faasiq.

- 2) When the *Waliy* happens to be insane even though his insanity is not permanent, it would then be correct for the *Waliy* who is next in line in sequence, to put the *Aqd* into effect. But, if the *Waliy* regains his sanity, it would then not be correct for anyone else, but him, to contract the marriage.

If the *Waliy* loses his sanity temporary, say for one day of the year, then it is necessary for all concerned to wait until he regains his sanity.

The Prerogatives of the Waliy Ghayru Mujbir

The *Waliy Ghayru Mujbir* has no right to marry a young maiden unless she gives him the right to do so and approves thereof. Her consent is necessary.

A *Bikr's* approval is attained when a proposal for marriage is made and she remains silent. Her silence is then interpreted as approval as long as there is no reason to interpret her silence as rejection. Example : She remains silent but bursts out crying and starts screaming.

The above law is in connection with her husband to be. However,

as far as the *Sadaaq* is concerned, it is necessary to obtain her approval if she is married for a dowry in foreign currency and under the amount of *Mahrul Mithl*.

As far as the *Thay-yib* is concerned, it is necessary that her approval be clearly obtained irrespective of whether her *Waliy* happens to be her father, grandfather or any other.

NOTE: A *Thay-yib* is one whose virginity was lost through sexual intercourse be it *Halaal* or *Haraam*.

The *Waliy Ghayru Mujbir* has no right to marry a sane minor girl under any circumstances because her marriage is based on her consent and approval. This cannot be obtained while she is a minor unless she becomes of age. *Sayduna Aboo Hurairah* said: "That the *Nabiy S.A.W.* said:

"A widow is not to be married unless she clearly instructs someone to do so. And the young maiden is not to be married, unless she consents to it. The Companions said: "And how is her consent given?". The *Nabiy S.A.W.* said: "She remains silent".

لَا تَنْكَحُ الْأَيِّمُ حَتَّى تُسْتَأْمَرَ،
وَلَا تَنْكَحُ الْبِكْرُ حَتَّى تُسْتَأْذَنَ،
قَالُوا يَا رَسُولَ اللَّهِ وَكَيْفَ إِذْنُهَا ؟
قَالَ أَنْ تَسْكُتَ

رواه مسلم

If a minor girl happens to be an orphan as well as insane, then her *Wilaayah* is transferred over to the *Haakim*. This is related to matters concerning her finance and marriage. However, it will be improper for the *Haakim* to marry her off except under these two laws:

- 1) That she must be matured as she will not be in need of marriage before this.

- 2) That she must be in need of support after she reaches the age of maturity (*Buloogh*) if she is unable to acquire such support but through marriage.
- 3) When the *Waliy* happens to be a *Faasiq* and if he repents, will this right to the *Wilaayah* return to him immediately. One does not need to wait for a period of one year to pass, by which time the *Waliy* must confirm that he is honest and reliable as in the case of witnessing.
- 4) When one is placed under curatorship due to being a sinner or due to being foolish/silly or incompetent in handling money matters (or other). In such an instance, the *Wilaayah* is transferred to the one next in line.

NOTE: When the *Waliy* happens to be placed under liquidation or bankruptcy, then this right to the *Wilaayah* does not fall away.

- 5) The *Waliy* must not be incompetent in the use of his discretion or to be physically incapacitated which makes him incapable of investigating the condition of others or to recognise them. he must also not be retarded or irrational.
- 6) The *Waliy* must not be a follower of different *Deen* to that of the girl. Therefore, no *Kafir* can be a *Waliy* to a Muslim girl or a Muslim be a *Waliy* to a non Muslim girl. From this we deduce, that should these six circumstances prevail, then the *Wilaayah* is transferred unto the one next in line.

A blind person or one who has lost consciousness, will not lose their right to the *Wilaayah*. Although the blind man is unable to see, he has nonetheless the ability of judging and investigating the condition of others. Similarly, the person who is unconscious, we will have to wait for him to regain consciousness.

In certain instances the *Wilaayah* is transferred to the *Haakim/Quadee/Sultan*, in the performance of the *Aqd*. These instances are:

- a) When the *Waliy* is in the *Ibaadah* of *Haj* or *Umrah* or both. In this instance it is even forbidden for the *Waliy* to even commission someone else to solemnize the marriage.
- b) In a situation where the *Waliy* is out of town and at a distance away from where one is allowed to perform *Quasar Salaah*, while the *Waliy* did not commission someone else before his departure to solemnize the marriage. If it so happens that the *Haakim* had completed the solemnization of the *Aqd* whereafter the *Waliy* returned and claims that he was very near his hometown when the transaction was put into effect, then such an *Aqd* is regarded as incorrect. If on the other hand, the *Haakim* had contracted the marriage whereupon the *Waliy* now claims that he had contracted a marriage with another before the *Haakim* had solemnized the transaction, then the action of the *Haakim* becomes authentic if the *Waliy* fails to prove his claim beyond any reasonable doubt.
- c) When the *Waliy* refuses to marry a girl while the girl wishes to be married to a *Kuff* and even below the *Mahrul Mithl*. Here the *Wilaayah* is not transferred to the one next in the line of *Tarteeb* unless the *Waliy* wrongly refuses her thrice. Through his refusal thrice, is he now branded by the *Sharee-ah* as a *Faasiq* and unfit to be a *Waliy*. But if he wrongly refuses her marriage once or twice, then the *Haakim* takes over representation.
- d) When the *Waliy* is in jail or is being held in captivity which would prevent him from solemnizing the *Aqd*.

The Discussion of Taukeel

This is a situation where the *Wali* appoints a substitute to sanction a marriage. A father through his inherent right and authority over his unmarried daughters has the legal power to appoint a *Wakeel* to execute his desired wishes. This is subject to the following rules:

- 1) The *Wali Mujbir* has the prerogative to appoint a *Wakeel*. By authority now vested in the *Wakeel*, he has the right now to marry off the *Wali Mujbir*'s daughter without gaining her consent or approval. he may marry her off to a specified person of his choice.

He may also marry her off to a person specifically stipulated by the *Wali*. Remember, as has been discussed before, that the *Wali Mujbir* has the right vested in him by the *Sharee-ah* to act in the best interest of his daughter. It is not a law to be abused for personal gain or for any ulterior motives. The above *Hukum* has not been designed by the *Sharee-ah* to cause a woman to live a life of misery or *Haraam*.

It is an undisputed fact that such marriage has taken place in future. However, such women are under the protection of the *Sharee-ah*. Should a woman be forced into such a marriage, she has the prerogative to repudiate it by approaching the *Haakim* and stating her case, and if valid, the *Haakim* will declare such a marriage null and void.

- 2) Should the *Wakeel* marry off the girl to his choice, then the *Sharee-ah* behaves that he marry such a girl to her *Kuff* and upon the *Mahrul Mithl*. A marriage to a person below the girl's *Kuff* and under the dowry of *Mahrul Mithl*

is null and void. If on the other hand the girl was married to her *Kuff*, and she disputes the authenticity of the *Kuff*, then she has the right reserved to her to request a better *Kuff*. However, if the *Wali Mujbir* himself marries her off to an equal suitor, then she cannot request a better *Kuff*.

NOTE: A girl forfeits the right reserved to her if it can be established and substantiated that the person to whom she was married was indeed her *Kuff*.

- 3) Now we come to the situation of the *Wali Ghayru Mujbir*. He also has the power and authority to appoint a *Wakeel* to marry off his charge to someone known or unknown. This is subject to these rules:

- a) The *Wali* is authorised by his charge to find her a suitable husband. Only when authority is vested in him can he institute *Taukeel*.

- b) That the woman should not prohibit him from appointing a substitute. If she says to her *Wali* "I desire that you only see to it that I get married to no one else", then *Taukeel* in this instance will be forbidden.

- c) If the woman described to her *Wali* to whom she should be married to, then the *Wali* has the power to appoint *Taukeel*, but, the *Wakeel* has only the authority to marry her off to the man which she has described to her *Wali*.

Note of Importance: The bridegroom also has the prerogative to appoint a *Wakeel* to act on his behalf. Should a bridegroom be unable to present himself at the wedding for legitimate, unforeseen circumstances, then he may marry by proxy. The rule that applies here is that once the marriage has been accepted by the *Wakeel*, it is of utmost importance for him to state: "I have accepted this marriage by proxy on behalf of.....who

appointed me as his Wakeel".

He must also not forget to notify the witnesses that he is the Wakeel of the bridegroom and is thus acting on his behalf. The Wakeel cannot merely make such a Niyah, because, it is necessary for the two witnesses to know what role he is playing. For the witnesses to assume the he is the substitute for the bridegroom is contrary to the law and invalid.

I give below the Seeghah which has to be adopted by both the Waliy and the Wakeel of the Zouwj. The Wakeel says to him:

"YAA AHMAD. ZAW WAJTU
FATIMAH LI YOOSUFA MUWAK
KILUKA BISS SADAAQIL MUT
TAFaqi BAYNAKUM"

يَا أَحْمَدَ زَوَّجْتُ فَاطِمَةَ لِيُوسُفَ
مُؤَكَّلَكَ بِالصَّدَاقِ الْمُتَّفَقِ بَيْنَكُمُ

"O Ahmad, I have married fatimah to Yusuf who has made you his Wakeel upon the Sadaaq which was agreed upon between all (parties involved)".

The Wakeel (Ahmad, representing Yusuf) says:

"QUABILTU ZAWAAJA FATIMAH
LIMUWAK KILEE YOOSUFA BIS
SADAAQIL MUSAM MAA".

قَبِلْتُ زَوَاجَ فَاطِمَةَ لِمُؤَكَّلِي
يُوسُفَ بِالصَّدَاقِ الْمُسَمَّى

"I have accepted marriage to Fatimah on behalf of Yusuf (who has made me his wakeel) for the dowry agreed upon".

All rules which apply to the Waliy also apply to the Taukeel, such as the fact that the Wakeel should not be a Faasiq, an insane person, a child or an intoxicated person.

The Waliy is also allowed to appoint one or more Wakeels in the performance of a marriage. If, for instance, the Waliy has appointed two Wakeels at different intervals or even at the same time to marry off his daughter or sister after consent was given to do so

to any Kuff they find suitable. This was carried out, but, after a while, the second Wakeel came up to the Waliy and said: "Here is your son in-law (or brother in-law) whom I married to your daughter (sister) while the first Wakeel also married her. The situation is judged as follows:

If it is clear which Wakeel solemnized the marriage first, then that, first marriage is correct even if the second marriage was already consummated. In this instance, the woman must now be separated from the one she believed to be her husband. She now undergoes a period of waiting and after the Iddah has expired, the woman is then returned to her actual husband. This is called *Wat Ush Shubuhah*.

If no certainty can be established as to who among the two bridegrooms got married first, then both the husbands should divorce her. After the Iddah a new marriage contract is entered into with whosoever the girl wishes to marry among the two suitors. Alternatively, the Haakim may also declare both marriages invalid and if no consummation took place, then she is allowed to immediately remarry anyone among them of her choice. But, if consummation took place, then Iddah becomes necessary. Allah says:-

"O ye who believe, when you had married believing woman whereafter you had divorced them before you had consummated your marriages, then there is no period of waiting for them to undergo"

Suratul Ahzaab (verse 49)

If both Wakeels married the same woman, one to her equal suitor

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَكَحْتُمُ
الْمُؤْمِنَاتِ ثُمَّ طَلَقْتُمُوهُنَّ مِنْ قَبْلِ
أَنْ تَمْسُوهُنَّ، فَمَا لَكُمْ عَلَيْهِنَّ
مِنْ عِدَّةٍ تَعْتَدُونَهَا

and the other not to a suitor (kuff), then the marriage to the equal suitor is correct. This should be the Judgement of the *Haakim*.

Similarly, if it was agreed upon by the *Waliy* and the *Wakeel* that a suitor be found and to marry her off to such a suitor although not a *Kuff*, while the girl consented to this, then no harm is done. But, if two people married her off, one through her approval and the other without consent, then the marriage is *Sah* of the one who was married to her through her approval, even, if the first marriage was consummated of the one she was married too without approval.

Proof from the Holy Qur'an and the Sunnah that the Waliy is a pre-requisite required by the Sharee-ah before a marriage can be put into effect.

Allah says:-

"And do not prevent them from marrying their former husbands if they both agree that they will uphold Allah's Laws with justice"

Suratul Baqarah (Verse 232)

The reason for the revelation of this verse was that a man by the name of *Ma'qual Bin Yasaar* had a sister who was married. Her husband divorced her and after a time wanted to reconcile with her. Incidentally, this was what his sister wanted too. *Ma'qual* was against them reconciling. So, when this verse was revealed, he conceded and remarried them.

Sittina A-ishah reports that the *Nabiy S.A.W.* has said:

"Any woman who marries herself without the permission of

أَيَّمَا امْرَأَةٍ نَكَحَتْ نَفْسَهَا بِغَيْرِ

فَلَا تَعْضُلُوهُنَّ أَنْ يَنْكِحْنَ
أَزْوَاجَهُنَّ إِذَا تَرَاضَوْا بَيْنَهُمْ
بِالْمَعْرُوفِ

إِذَنْ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ

her Waliy, then her Nikaah is Baatil".

رواه الترمذی

Sayduna Aboo Hurairah reports that Allah's Messenger S.A.W. has said:

"No woman is allowed to sol- لَا تَزَوِّجُ الْمَرْأَةُ الْمَرْأَةَ وَلَا تَزَوِّجُ الْمَرْأَةُ نَفْسَهَا
emnize the marriage of an- other woman, and no woman should marry herself".

رواه ابن ماجه والدارقطني

Summary Extracted from the Discussion of the Waliy

- 1) All four *Imaams* agree that the *Waliy* is imperative for the authenticity of the *Nikaah*. Thus, no woman has the right to perform a marriage of herself under any circumstances irrespective of whether she is a young maiden, a widow, a divorcee, a child or an insane woman. We know by now, a widow and a divorcee must give her consent clearly before a marriage contract can be put into effect.

Imaam Hanafiy differs here. He states that the *Waliy* is only a pre-requisite when the marriage of a minor girl or an insane woman is to be performed. As for the woman being *Baaligh* and sane, irrespective of whether she happens to be a young maiden, a widow or divorcee, she is entitled to appoint her own *Wakeel* to perform her marriage for her.

- 2) The three *Imaams* agree that the *Waliy* in both categories i.e. *Mujbir* and *Ghayru Mujbir* is necessary at every *Aqd*.

However, *Shafi-iy* and *Hambaliy* regard the *Waliy Mujbir* as father and grandfather. *Imaam Maalik* states that the *Waliy Mujbir* is the father only.

Maalikiy and *Hambaliy* state that whoever the father commissions to solemnize the marriage is also regarded as the *Waliy Mujbir*. *Hambaliy* states that even the *Haakim* becomes the *Waliy Mujbir* in times of need.

- 3) The three *Imaams* agree that the *Waliy Mujbir* has the authority to marry off a young maiden only without her consent or approval but to her *Kuff*.
 - 4) The three *Imaams* also agree that :
 - a) Neither a divorcee or a widow has a *Waliy Mujbir*.
 - b) The *Waliy* has the prerogative to perform the marriage only if she has given clear consent '*Sareeh*'. صريح
 - c) Both the *Waliy* and the bride to be becomes partners in the *Aqd*. This is so because the woman has to give her consent clearly while the *Waliy* has to perform the *Aqd*.
 - 5) *Imaams Shafi-iy* and *Hambaliy* both agree the persons who have the most right to the *Wilaayah* concerning the *Waliy Mujbir* are : (a) The father (b) The grandfather. *Imaams Maalik* and *Hanafiyy* hold the opinion that the *Waliy Mujbir* is the son. He comes ahead of the father and grandfather.
- Imaam Shafi-iy* says : "No son can be a *Waliy* for his mother" whereas *Imaam Hambaliy* states that the son comes after the father but ahead of the grandfather.
- 6) *Imaams Shafi-iy*, *Hanafiyy* and *Hambaliy* all agree that the *Waliy* far down the line of sequence has no right to per-

form a marriage while there is a *Waliy* nearer to him available to perform such a marriage, unless, circumstances warrants it otherwise. Not even the *Haakim* can do this. *Imaam Maalik* says: "The sequence of the *Ouliyaa*' is *Sunnah* and not necessary even if the *Haakim* performs the marriage while her *Waliy* is at hand.

- 7) The three *Imaams* agree that it is a pre-requisite for the authenticity of the *Aqd*, that the *Waliy* be a male. *Imaam Hanafiyy* differs on this.
- 8) The three *Imaams* agree that it is strictly forbidden for a *Faasiq* to perform the marriage. Such a right is bestowed then on the *Waliy* next in line of *Tarteeb*. *Hanafiyy* says that this rule only comes into operation if it is publicly known that the *Waliy* is a *Faasiq* and when he has not married her off to her *Kuff*.
- 9) All agree that to possess the quality of honesty is not a pre-requisite for the authenticity of an *Aqd* to become effective. *Hambaliy* hold the view that it is a pre-requisite that the *Waliy* must be an honest person at least openly.
- 10) All agree that the *Waliy* can appoint *Taukeel*.

The Waleemah (Wedding Banquet)

The *Waleemah* according to the *Arabic* language specifically means the food prepared for the wedding feast. According to the *Fuquahaa*' (Jurists), it is the food prepared for the feast after the marriage had been consummated.

The Hukum of the Waleemah

It is a **Sunnah Mu-Akkad** for the husband to give food if he is financially by means to do so. If the husband is financially equipped, then it becomes **Sunnah** that no less than one sheep is to be slaughtered. This is based on the testimony of the **Nabiy S.A.W.** when the Holy Prophet said to Sayduna **Abdurrahmaan bin Auf** when he notified the **Nabiy S.A.W.** of his marriage:

"Prepare the wedding feast even if it is but one sheep". أَوْ لَمْ وَلَوْ بِشَاةٍ
رواه البخارى ومسلم

But, if the person is unable to afford the slaughtering of a sheep, then it is sufficient for him to do what he is able to afford.

It has been reported through **Bukhaariy**:

"That the Holy Prophet S.A.W. (صلى الله عليه وسلم) رَوَى الْبُخَارِيُّ أَنَّ النَّبِيَّ (صلى الله عليه وسلم) prepared the wedding feast of some of his wives with two Moedds of barley". أَوْ لَمْ عَلَى بَعْضِ نِسَائِهِ بِمُدَّيْنِ مِنْ شَعِيرٍ

One Moedd is the equivalent of three quarter of a kilogram.

The Duration of the Waleemah

The **Waleemah** commences from the time the **Aqd** has been contracted, and has no stipulated time for ending. However, some **Ulamaa'** stipulated that the longest duration of the **Waleemah** in the case of a young maiden is seven days and three days in the case of **Thay-yib**. Should the festivities continue beyond the stipulated time by those guests invited, then it is regarded as **Quadda'**. The **Afdal** time for the marriage banquet to be given is after the marriage was consummated.

Honouring the Wedding Invitation

It is **Fard** to attend a wedding banquet if one is invited. The **Nabiy S.A.W.** has said:

"Attend an invitation when you are invited thereto".

اُتُّوا الدَّعْوَةَ إِذَا دُعِيتُمْ

Factors which determines the extension and acceptance of wedding invitations:

- 1) The **Waleemah** is extended for the purpose of giving **Sadaquah** and more important, to establish and inculcate unity and Islamic Brotherhood.

It does not necessary mean that all and sundry must be invited to the **Waleemah**. However, even under the most favourable circumstances a host cannot and must not specifically invite only the rich. To do this is contrary to the true spirit of brotherhood in **Islaam**. In fact, if the host is guilty of this crime by having invited only the rich or the elite, then such a host loses his right which the **Sharee-ah** has reserved for him over his fellow brothers.

It is a pre-requisite on the host that he should invite rich and poor alike. Should it occur that the host has invited only the rich to the **Waleemah** for the sole purpose of enhancing his social standing, esteem and personality, then the **Sharee-ah** regards such an action as a moral corruption of human nature. It has to be noted however, that no harm is done if a host invites a rich neighbour or a business contemporary.

- 2) The invitation must be extended for the first day. If the wedding banquet is to last for three or seven days, then it

is only *Wajib* to be present there on the first day. To be present on the second day will be *Mustahab* and thereafter, it will be *Makrooh* to be present.

- 3) That the host extending the invitation must be a Muslim. It is not *Wajib* to accept an invitation extended by a *Kaafir*. To accept the invitation of a *Thimmiy* ذمى (a non Muslim under Islamic government) is *Sunnah* (a *Sunnah Mu-akkad* as some believed).
- 4) The host must be a responsible person capable of handling and executing his own affairs. If it is ascertained that the host is a simpleton, a mentally deranged person or one under curatorship and that the expense of the *Waleemah* is to be incurred by him, then it is *Haraam* to accept such an invitation. However, if the *Waliy* uses his own funds to prepare a wedding feast, then no harm is done, and then, it will be *Wajib* on those invited to respond to such an invitation.
- 5) The host should be specific in naming the guests he is inviting. This should be done either personally, by messenger or by way of a written invitation. It is not *Wajib* for one to attend a wedding feast if a host has invited an entire congregation of a Mosque.
- 6) The host should have no ulterior motives when extending invitations to guests by way of example:
 - a) For fear of victimization.
 - b) To secure the allegiance of a person of standing.
 - c) To gain favours.
 - d) To be recognised as person of means.

e) To establish allies to assist such a person is *Baaril*.

- 7) The host should accept a legitimate excuse of absence from his guest especially if he was notified that a certain guest cannot be present for some legitimate reason. Here again the guest must ensure that he receives his host's blessings when leave for absence is sought. On the other hand, the host must accept the excuse in good faith and should not burden his guest by outwardly showing disappointment.
- 8) Should the host be a *Faasiq*, a boastful person or unsavoury of character, then it will not be *Wajib* for the guest to accept his invitation.
- 9) If it is established beyond any dispute that *Haraam* money is being used for the preparation of the banquet, then it is *Haraam* for the guests to accept the invitation. Moreover, if it can be verified that all or most of the money used for the preparations are *Haraam*, then it is *Makrooh* to accept the invitation. It is not *Wajib* nor *Sunnah* to attend if there is cause to doubt whether the money spent for the banquet is *Haraam* or *Halaal*.
- 10) The guest must not be a strange unrelated female attending the banquet without any of her *Mahrams* present., for fear that there may be situations where both the host and such strange unrelated female guest may possibly find themselves in seclusion without any *Mahram* nearby. This is *Haraam* even though no one will be in seclusion at all.
- 11) That the invitation should be expected during the period of the *Waleemah* which is from the time the *Aqd* took place.

12) The guests must not be people who hold the following portfolios:

- a) Quadee.
- b) Governor.
- c) King.

Especially in places or areas where they have the authority to execute their power and particularly if there happens to be disputes between the host and such guests. Responding to such banquets will be *Haraam*.

13) That the guest must not have a valid reason for staying away i.e. sickness or any other reason which allows one to stay away from *Jumu-ah*.

14) The guests must not be invited for that particular day by a number of other hosts. If there are more than one wedding banquet taking place in the area/city/village/town and the guests are invited to a number of them, then this procedure must be followed.

- a) The one extending the invitation first is taken into consideration.
- b) Those nearer in relation to the guest.
- c) The nearest neighbour.

If two invitations were simultaneously received, then the matter is decided by ballot. If the person has responded to the invitation by being present, then he had fulfilled his Fard obligation. Such a person is then not compelled to eat. To partake of food will be *Sunnah*.

If it so happen that the guest is fasting, then it is required that the guest should approach his host and inform him that he is fasting. The guest should make Doa for him and thereafter leave.

If the guest has gone to the host and explained his position, and it is clear that the host is openly disappointed or that the host is grieved that he is not going to bless his banquet by partaking of his food, then it will be *Sunnah* for the guest then to break his fast.

The reason for the *Sharee-ah* declaring that it is *Sunnah* for a guest to break his *Sunnah* fast, is because, it is greater and more nobler to bring happiness to a fellow Muslim than to break his heart and cause him distress and disappointment.

But, if the guest is observing a Fard fast, then it would be improper for him to break his fast for such a purpose. It will be more suitable and polite on the part of the host to accept such an excuse instead of forcing the guest to eat.

The Hukum of Photography

The question arises, "Is it *Waajib* to refrain from a marriage banquet on the basis that one is sure that photographs will be taken?" The answer is **no, certainly not**. The only time when one is allowed to refrain from presenting oneself at a banquet is when *Tasweer* or *Soorahs* are staged which is *Haraam* for viewing.

The word *Suwar* صُور denotes: form, shape, mould, fashion, create, paint, draw, illustrate, sketch and photograph.

The word *Tasweer* تَصْوِير denotes: drawing, sketching, portrayal, depicting and painting.

Tasweer Ash Shamsiy تصوير الشمسى denotes motion picture making and photography. Let us now refer to the *Hadeeth* to get a true meaning of the above terms:

Abdullah Bin Mas-ood said:

"I heard the Messenger of Allah said: "Truly the people who will be most severely punished by Allah (on the Day of judgement) will be the **Musaw Wiroon**. (Those who make sculptures)".

عَنْ عَبْدِ اللَّهِ بْنِ مَسْعُودٍ قَالَ
سَمِعْتُ النَّبِيَّ (صلى الله عليه وسلم) قَالَ،
إِنَّ أَشَدَّ النَّاسِ عَذَابًا
عِنْدَ اللَّهِ الْمُصَوِّرُونَ

رواه البخاري

In another Hadeeth, Abdullah Bin Umar says:

"That the Nabiyy S.A.W. has said: "Truly those who make these **Suwar** will be punished on the Day of Qiyaamah. It will be said to them: "Give life to that which you created".

عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ
عَنْهُمَا أَنَّ رَسُولَ اللَّهِ (صلى الله عليه وسلم)
قَالَ، إِنَّ الَّذِينَ يَصْنَعُونَ هَذِهِ الصُّوَرَ
يُعَذَّبُونَ يَوْمَ الْقِيَامَةِ يُقَالُ لَهُمْ احْيُوا
أَمَّا خَلَقْتُمْ

رواه البخاري

The Holy Qur'an clearly defines the meaning of **Suwar** (Surah Taghaabun Verse 3)

"He has Created the heavens and the earth in just proportion and has given you shape, and he made your shapes beautiful. And to Him you shall return".

خَلَقَ السَّمَوَاتِ وَالْأَرْضَ بِالْحَقِّ
وَصَوَّرَكُمْ فَأَحْسَنَ صُورَكُمْ
وَالِيهِ الْمَصِيرُ

In modern Arabic the word **Suwar** is used for photography. In this context it is definitely not what is meant by Allah and neither His Rasool S.A.W.

*1 **Suwar** depicting idols or sculptures of any inanimate creature (intelligent or not) in three dimensional form are totally **Haraam**. Muslims understand idolatry as the **invo-**

cation of gods, adoration of images and keeping and the retaining of them. This is a grave sin. The **Shaa-fi-yy**s maintain that it is **Jaa-iz** to have **Tasweers** of inanimate subjects such as trees, ships, the sun, the moon and the stars only if it is in mould form. But to shape any animate subjects are **Haraam in mould form**.

Therefore, if the person shapes any of the above mentioned subjects, it is done either because it has a form or shape or it does not have any.

If a **Suwar** be it a sketch or a drawing, is abstract, then it is **Halaal** to view. The added requirement here is that it must be drawn on the ground, or on a carpet or canvas on which one will walk. It can also be sketched on pillow slips on which one sleeps or recline against. In other words it should be used with irreverence. But, if such **Suwar**s are displayed from ceilings or walls for the purpose of adornment, then it is **Haraam** to view. This is to obviate it being glorified, honoured and deified

If on the other hand a **Surah** is depicted of a torso or bust with three dimensions, or even a headless bust, or a figure with a hole in the centre, then it is **Halaal** for viewing. The reason being that it does not depict something which one can imagine to be able to live in such a state i.e. a headless bust or a figure with hole right in the centre.

From the above we learn that it is **Jaa-iz** to view features which are regarded as **Khay-Yaaluth Thill** (السينما) motion picture making, because it is an incomplete **Soorah** providing it does not depict **Haraam**. We should note that an exception to the rule

*1 This information right through to the end of the section of singing has been taken from the Kitaab "Mathaa-Hibul Arba-ah Volume two page - 40"

is the manufacture and selling of play dolls. Despite the dolls having three dimensions, it is *Jaa-iz* on the basis that it can be used to train girls, especially, the skills of rearing children. The use of dolls or anything else for purpose of education, is held in esteem by the *Sharee-ah*. However, manufacturing dolls for idolatory purposes is a major sin.

We should also note the views held by the other three *Math-haabs* on this subject. They say: "If a portrait is sketched on cloth, a carpet or even a pillow case, then it is *Jaa-iz* because it will be used with irreverence". Therefore, it cannot be remotely considered as idols to be worshipped.

It is quite clear that the Islamic *Sharee-ah* denounced, and terminated paganism. Any veneration or invocation of created things is totally *Haraam*. It must be remembered that photography has many facets. The formal wedding photographs in particular is a valid record of the occassion. It cannot be equated with any object created for purpose of veneration or invocation (idolatory).

Important: In the Islamic Jurisprudence we have A Golden Rule which goes as follows:

"KULLU MAA LA YATIM MUL
WAAJIBU IL LAA BIHEE WAHUWA
WAAJIB".

كُلُّ مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ
فَهُوَ وَاجِبٌ

"Everything by means of which a decree of compulsion becomes complete, then that (necessity) also becomes *Waaajib*".

Example: It is *Waaajib* to perform *Haj*. One of the conditions are that there should be conveyance i.e. aeroplanes, ships, cars etc.. So from this we learn that mechanics, engineers, pilots drivers and many other different types of skilled people will be required to complete this compulsion.

The result is, that the knowledge of all these people will be *Waaajib* in the completion of this condition of *Haj*. Thus, if the Muslims do not have such people among them, then the entire community, will be liable for punishment, because they did not carry out **what was *Fard Kifaayah***.

Similarly, we are compelled by Allah to punish evil doers and to protect the community against them. So, if there are thieves around whom we know, or there is a killer or rapist at large, then it will be *Fard* that the community be informed of them for their own protection and safety. Thus, if it means protecting the community by means of issuing photographs of them, then such printing of photographs become a *Waaajib*. Close Circuit television in shops to protect such owners against shoplifters and other thieves will also become *Waaajib*. From this we learn that **at times photography will become *Waaajib*, at other times *Sunnah*, at some times *Makrooh* and of course at times it may even become *Haraam*, depending on the situation which prevails.**

The Hukum of Singing

The Nabi S.A.W. has said:

"Publicise the marriage, keep it up in the Mosque, and let the tambourines be beaten".

أَعْلِنُوا هَذَا النِّكَاحَ وَاجْعَلُوهُ فِي
الْمَسَاجِدِ وَأَضْرِبُوا عَلَيْهَا بِالدُّفُوفِ

In another *Hadeeth Rubay-yi* the daughter of *Mu-aw* with the son of *Afraa* said :

The Nabi S.A.W. came to our residence and entered when *يَدْخُلُ حِينَ* جَاءَ النَّبِيُّ (صلى الله عليه وسلم)

my marriage was to be consummated. He sat on my bed at the same spot where you now sit away from me. Our slave girls started beating the drums and lamenting those fathers of mine (her father and two uncles) who were slayed in the battle of badr. One of the slave girls then chanted: "And among us is a Prophet who knows what lies in tomorrow". The Nabi S.A.W. said to her: "Abandon that which you just said now, and continue with that which you said before".

يُنِي عَلَى، فَجَلَسَ عَلَى فِرَاشِي
كَمَجْلِسِكَ مِنِّي، فَجَعَلَتْ جَوِيرِيَّاتُ
لَنَا يَضْرِبْنَ بِالْذُفِّ، وَيَنْدُبْنَ
مَنْ قُتِلَ مِنْ آبَائِي يَوْمَ بَدْرٍ، إِذْ
قَالَتْ أَحَدَاهُنَّ وَفِينَا نَبِيٌّ يَعْلَمُ
مَا فِي غَدٍ، فَقَالَ دَعِي هَذِهِ
وَقُولِي بِالَّذِي كُنْتَ تَقُولِينَ

رواه البخاري

Many people hold the view that singing is *Haraam*. They feel that because, there is singing taking place at a marriage banquet, they are well within their rights to stay away from the *Waleemah*. The answer is that one is **not allowed to stay away from the *Waleemah* just because of singing**, unless, the songs are made up of words which are *Haraam*. But, if not, and the singing falls under the category of *Mubaah* (مباح) (permissible), then one must attend the *Waleemah*.

One should bear in mind that *Islaam*'s prime objective is to mould and shape its followers, to prune their character, to cleanse them from evil which may pollute them spiritually. Thus, anything that will pollute one's mind with filth will be classified as *Haraam*.

One must also remember that *Islaam* is a religion of tolerance and it is not a religion designed to make things difficult for its

followers. It encourages functions of joy and happiness, especially when family and friends are going to be united at one place. The above statement of the Messenger of Allah makes it quite clear that **not even the Nabi stopped people from singing**, but, he stopped them when one of them uttered words that was contrary to the teachings of *Islaam*. he told them what they could sing and what not. For this reason, the *Ulamaa*' has laid down the following conditions :

- 1) *Ghinaa'* (غناء) (singing) is *Haraam* if its words are made up of sounds describing a particular woman still alive. This will cause *Fitnah* and may stir the emotions of some. However, if the woman is deceased, then no harm is done if the song is made up, describing her noble attributes. The same rule concerns a young man.
- 2) It must also not be made up of sounds/words describing wine, as this may lead people to frequent places where liquor is served and it may also incite one to drink it or even taste of it.
- 3) No songs are allowed if it is designed to ridicule or to defame people, irrespective of whether they are Muslims or Thimmis. Such songs are forbidden and so is it *Haraam* to listen to.

The following types of songs are allowed and are classified as *Mubaah* with no harm attached to it:

- a) Songs made up of wisdom or *Mawaa-ith* (مواظ) (admonishment against evil).
- b) Songs made up of words describing roses and flowers etc..
- c) Songs made up of words describing the valleys and green fields.

- d) Songs made up of words describing nature as a whole or part thereof.
- e) Songs made up of words describing the beauty of a human being but free from anything that may cause **Fitnah** which is **Haraam**.

The Subject of the Kafaah-ah

The **Kafaah-ah** or **Kuff** signifies "qualifications/compatibility/suitability/equal.

Allah says in the Holy Qur'an:

"It is he who created man from water and he made them into families and fused them to have relationship through marriage".

وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا
فَجَعَلَهُ نَسَبًا وَصِهْرًا

Suratul Furqaan (verse 54)

We will now discuss the Kafaah-ah under the following headlines:

- 1) Its definition
- 2) Is the Kafaah-ah a rule for the correctness of a marriage?
- 3) Is the Kafaah-ah considered from the side of the husband, the wife or is it considered from both sides?
- 4) Who has the right to sever the Aqd if this concept of Kafaah-ah is not met?

Its definition

The Kafaah-ah is a decree, which, if it does not take place, will bring shame and degradation. It is also generally agreed that there must be quality between the husband and wife in anything that may bring about perfection or even vileness.

It is not a pre-requisite that both parties should be free from any physical defect as far as the Kafaah-ah is concerned. If, for example, both of them suffer from leprosy or any other defective disease, then both of them have a right to **Fasakh** the marriage by requesting the **Haakim** to do so.

Here it cannot be said that because they both have the same sickness or defect, that they are equal and suitable for one another. Remember, man will abhor what he sees in someone else, but he will not abhor the same in himself. The Kafaah-ah is considered in four situations:

- 1) The Deen
- 2) Nasab
- 3) Hur Riy Yah
- 4) Hirfah

The Deen

When we speak of **Deen**, it is meant that the husband must be equal or suitable for the wife in qualities of modesty and uprightness. If, for example, the man happens to be a **Faasiq** through **Zinaa**, then he is not a **Kuff** for the chaste woman even though he may have repented and is living righteously. Remember, repentance will not erase the shame of the act that was committed especially if it was broadcasted all over.

There are differences of opinion among the *Ulamaa'* concerning the act of *Zinaa'* and other acts. All agree on *Zinaa'*. However, some *Ulamaa'* hold the view that if a man is a *Faasiq* through a sin other than *Zinaa'*, say, wine for example, or is guilty of false testimony, whereafter he sincerely repented, then he becomes a Kuff for a righteous woman. Some *Ulamaa'* issued their verdicts on this while others reject it.

If in the event the woman, is like the man is sinning, then there is no dispute that she becomes a Kuff for him e.g. an adulterer for an adulteress etc.. But should the man's evil increase, then such a woman will not be considered a Kuff to him.

Islaam is also a rule when matter of Deen is taken into consideration. When Islaam is taken into account, it is meant the Islaamship of the fathers. Thus if the girl's father is a Muslim, then she is not a Kuff for a man whose father is not a Muslim. And whosoever among womenfolk have perhaps four forefathers as Muslims then they are not kuff for menfolk who perhaps only have two or three forefathers as Muslims.

Here is however an exception and that is the Sahabah (companions of the Prophet). A Sahabiyy can be a kuff for a Taabi-iy-yah (successor of a companion) even if she has more forefathers as Muslims than he. On this there is a text from *Nabiy S.A.W.* that his Sahabah are more honourable than others besides them.

The Nasab

When it comes to Nasab, man is categorised as follows:

Arabiyy عَرَبِيٌّ (Arabian), **Ajamiyy** عَجَمِيٌّ (non Arabs/ Foreigners)

THE ARABS

They are sub-divided into two groups:

Qurashiy (Those belong to the Quraish tribe) قُرَاشِيٌّ

Ghayru Qurashiy (Those not belonging to the Quraish tribe). Thus, the Quraish are Kuffs for other Quraish except those belonging to the **Banee Haashim and Banee Abdul Mut-talib**, who are regarded as the cream and most honourable among this tribe. So, **Banee Haashim** are *Kuffs* to the **Banee Abdul Mut-talib**. The other Arabs belonging to the Quraish are Kuffs for one another, but, they are not Kuffs for **Banee Haashim and Abdul Mut-talib**.

The remainder of the Arabs are not **Kuff** for a **Qurashiy** قُرَاشِيٌّ (one belonging to the Quraish tribe), but are **Kuffs** for one another. The **Ajam** (foreigners) are not **Kuffs** for Arabs even though their mothers may be Arabs.

If a woman is well known for her high and noble standing, because, she is the daughter of a man who is well known for his nobility and high rank, then it is *Waajib* that she gets married to a man who possess the same characteristics. There is no difference in this matter whether the persons spoken of here are Arabs or non Arabs.

When we speak of *Nasab* (descent/kinship), it is meant to be family ties from father's side and not the mother's side. There is an exception however, concerning the female descendents of **Sittina Fatimah R.A.** They are related to the **Nabiy S.A.W.** which are undoubtedly from among the highest and noblest groups of Arabs or Non Arabs.

What has been said of the Arabs is also said of the Non Arabs. It is said that the Persians are nobler than the Niebt (Nabateans) and

that the Banees Israa-eel (Jews) is more nobler than the orthodox Copt. There are Ulamaa' who do not recognise such disparities between the Non Arabs.

The Hur-ri-yah الحُرِّيَّةُ

When a person has slavery in his ancestry, then he cannot be a *Kuff* for a woman who does not have slavery in her ancestry. This too is considered from the father's side and not from the mother's side.

Thus if a man's mother is a slave woman but whose father is an Arab, then she is a *Kuff* for a woman who is an Arab and who was born as such.

The Hirfah الْحِرْفَةُ

Here consideration is taken into account on professions which **are customarily considered as despicable**, like streetsweepers, bathhouse attendants, rubbish disposers etc.. They are not *Kuffs* for one whose profession is honourable e.g. seamstresses, or whose father is a tailor, bricklayer, plasterer or an electrician etc..

One who has an honoured profession is also not a *Kuff* for a merchant. Likewise, the son of a merchant is not a *kuff* for a daughter of an *Aalim* or *Quadee* in accordance with what is **generally accepted as customary**.

Money is not taken into consideration as far as the *Kafaa-ah* is concerned. Thus, if a poor man marries a rich girl, then he still

remains a *Kuff* for her. We do not compare some of these qualities with one another.

EXAMPLE

A woman is a sinner and a free woman and the man is a righteous slave. It is then incorrect to compare the slavery to the evil, claiming that they are equal. Similarly, if the woman is an Arab but very sinful while the man happens to be a righteous Non Arab, then comparison is not made to his ethnicity against her evil, claiming that they are now equal.

Is the Kafaa-ah a rule for the correctness of the Marriage?

The *Kafaa-ah* is a rule for the correctness of the marriage when no satisfaction has been obtained. This is a right possessed by both the woman and her *Waliy*. Should they both be dissatisfied with a husband who does not conform to the laws of the *Kafaa-ah* then the *Aqd* is *Baatil*.

It has also been mentioned before that the *Kafaa-ah* is a rule for the *Waliy Mujbir* when he intends marrying off his *Bikr* daughter without her consent and approval. If he marries her to one who is not her *Kuff*, but she is satisfied, then the *Aqd* is correct and her right then falls away. Remember, here lies a rule, which is, that the approval of a maiden is obtained when being asked through her silence, but, the approval and satisfaction of a divorcee or widow must be obtained through a clear utterance.

In matters pertaining to the marriage, the *Waliy* and the girl are equal partners. here it is meant that one cannot do something without the other, except in cases of a man being impotent or when he cannot have an erection. Such dysfunctions of a man is entirely the prerogative of the woman and the *Waliy* has no say whatsoever in the matter.

If it so happens that a woman is satisfied with the husband and is under the assumption that he is a Kuff to her, but, only afterwards the matter became clear that the man was or is indeed a slave, then this free woman have the right of choice and the *Waliy* on the other hand have a right to object. No harm is done in this instance if the *Waliy* had already solemnized the *Aqd*. But, if they knew beforehand of the person's slavery, or dysfunctions before the marriage was contracted, then their right falls away if it is known that they were satisfied.

Is the Kafaah considered from the side of the Husband or the Wife, or is it considered from both sides?

One must also remember that the *Kafaah* is taken into consideration from the side of the woman and not from the side of the man. A man is at liberty to marry a servant or slave girl. This is so on the basis that it is a commonly accepted fact that people do not gauge or measure one another if they bed with a woman lower in status than what they are.

Who has the right to Sever the Aqd if the Kafaah was not put into effect?

A father is also allowed to marry off his young son to a woman who is not his son's equal. However, he the child, has the firm right of choice after he becomes *Mukallaf*. He may *Fasakh* the marriage or carry on with it. However, the marriage is not correct if the father marries such a child (boy) to a slave girl, an old blind lady or an old malformed lady. Although that is not regarded by the *Sharee'ah* as defects, the marriage is still annulled.

The Discussion of who all Among Womenfolk are Haraam for Marriage

As has been learnt before, one of the rules for the correctness of contracting a marriage, is that both persons must be free from anything which will prevent them from contracting such marriages. It is therefore incorrect to enter into a marriage contract which has become *Haraam* because of three reasons. These reasons again are sub-divided further into two:

- 1) Persons who becomes *Haraam* forever for one to marry.
- 2) persons upon whom the decree is not forever binding. In other words, if the cause of the *Haraam* disappears, then the decree changes to *Halaal*.

The reason which causes the decree to be forever binding are divided into three sections:-

- a) *Quaraabih* قَرَابَة (family relationships).
- b) *Musaaharah* مُصَاهَرَة (relationships through marriage).
- c) *Radaa'* رَضَاع (foster relationships)

The Quaraabih

There are three genealogical groups who are forever *Haraam* for marriage. They are:

- 1) The *Usool* أصول and *Furoo'* فروع One's *Usool* and *Furoo'* are; mother, father grandmother and grandfather from the sides of both parents right up the line of ascendancy. The *Furoo'* are : One's daughters, granddaughters, great granddaughters right down the lines of decendency.
- 2) *Furoo' U Abawayhie*. Branch line or affinity from both

his parents. Here it is meant, his sisters from both sides of his parents. Included in this category are the daughters of his brothers and sisters (i.e. nieces) right down the line of dependency. They all become *Haraam* for marriage.

- 3) Affinity from grandparents on both sides. Example uncles and aunts. Here it is meant blood uncles and aunts, or uncles and aunts from father and mothers side. At this point the decree of *Haraam* ends.

Note: From the third group only the first line of relatives are *Haraam* and nothing beyond that. i.e. the daughters of your uncles and aunts (cousins) are not *Haraam* for marriage.

The Musaahara

Here too there are three genealogical groups who are *Haraam* for marriage:

- 1) Affinity from a wife whose marital contract has been consummated, i.e. the wife's daughters and granddaughters as well as their own daughters right down the line of dependency. They all become *Haraam* for marriage. Allah says:

"And it is *Haraam* for you to marry your step-daughters under your guardianship born of your wives with whom your marriage has been consummated".

وَرَبَائِكُمُ اللَّائِي فِي حُجُورِكُمْ
مِنْ نِسَاءِكُمُ الَّتِي دَخَلْتُمْ
بَيْنَ

Surah Nisaa' (Verse 23)

Note: Should it occur that a marital contract was entered into with a mother of daughters, but such a marriage was not consummated, then the *Sharee-ah* allows such a man to enter

into a marital contract with such woman's daughter or granddaughter should he divorce the mother.

- 2) The *Usool* of one's wife. Here marriage to one's mother-in-law or grandmother or even great grandmother becomes *Haraam* forever.

Note: Such a marriage becomes *Haraam* even if one merely enters into a marital contract irrespective of whether it was consummated or not. The following golden rules elucidates this point.

"ALAQDU ALAL BANAATI YAHNUMU
ALAL UMMHAATI. WAD
DUKHOOLU BIL UMMHA HAATI
YAHNUMUL BANAATI".

الْعَقْدُ عَلَى الْبَنَاتِ يَحْرُمُ عَلَى الْأُمّهَاتِ
وَالدُّخُولُ بِالْأُمّهَاتِ يَحْرُمُ الْبَنَاتِ

"The marriage contract of daughters makes their mothers *Haraam*. And the consummation (of the contract with mothers), make their daughters *Haraam*".

The *Sharee-ah* has made this rule a stipulation because:

- a) The affection and attraction towards a man is much more stronger in a young woman than in an elderly woman. This inevitably leads to a very intense jealousy.

- b) Because such a marriage will lead to gross animosity between mother and daughter and strain relationship between them, the *Sharee-ah* has thus decreed this *Haraam*.

Therefore, is a man marries a woman and had not slept with her yet, then it is still *Haraam* for him to marry such a woman's mother. Because the daughter is jealous and her attachment much more intense, there is thus every reason to believe that such a daughter will utter words of abuse against her mother which are *Haraam* by the

Sharee-ah. But, the mother on the other hand is more tolerant understanding, and as always, quick to forgive because a **Mother will always want but the best for her daughter**.

- 3) Womenfolk whose marriage has been consummated by fathers or sons i.e. step-mothers and daughters in-law.

Radaa'

Concerning *Radaa'* whatever applies to *Nasab* (family lineage) also apply to foster relationships with a few exceptions.

It should also be noted that the facts noted in the aforementioned chapter makes marriage *Haraam* forever. At this stage, I will now elaborate on situations which makes the marriage *Haraam*, but the decree is not forever binding.

- a) To simultaneously marry a woman and her sister and/or aunt (from either paternal side) is invalid. It is still *Haraam* even if a man marries her sister or aunt at a later stage. Only if you have divorced the woman, can you marry her sister or the aunt.
- b) It is also *Haraam* for a woman to marry a male slave whom she possesses, or for a man to marry a female slave whom he possesses unless they are given their freedom.
- c) It is *Haraam* for a man to marry a Mushrik (polytheist)
- d) It is also *Haraam* for a man to marry a woman whom he had divorced thrice unless she re-marries someone else first.
- e) It is *Haraam* to marry a woman who is still under *Iddah* of *Talaq* or under *Iddatul Wafaa* (period of waiting of a stipulated period after a husband's death).

- f) When a man has divorced a fourth wife and wishes to marry another woman, then the *Iddah* of the fourth woman must be expired.

How the Musaahara is Applied to Make a Marriage Haraam

Musaahara (relationship through marriage) is applied because it connotes resemblances, physically, spiritually, morally and emotionally, in family relations. It comes to the fore in the following instances:

- a) The wife of a son. She resembles the daughter.
- b) The daughter of one's wife. She too resembles the daughter.
- c) The wife of one's father. She resembles a mother.
- d) The mother of one's wife. She too resembles a mother.

There is no dispute among the Ulamaa' that the wife of the son, the wife of the father and the mother of a wife, all become *Haraam* by virtue of the marriage contract. Thus, if a father contracted a marriage between himself and a specific woman, then such a woman becomes *Haraam* for his son and grandson right down the line of descendency by virtue of the marriage contract irrespective of whether the marriage was consummated or not.

Similarly, if a son contracted a marriage with a certain woman, then even if the marriage was not consummated, she then becomes *Haraam* for marriage (forever) for his father and grandfa-

ther right upto the line of ascendancy. She also becomes *Haraam* for sons, grandsons right down the line of descendancy even though the marriage was not consummated.

Concerning the daughter of one's wife i.e. step-daughter, such a daughter is not *Haraam* for the step-father's sons. Likewise, a son's step-daughter is not *Haraam* for such a son's father.

One is also allowed to marry one step-father's mother i.e. one's mother's mother-in-law. Similarly, one is allowed to marry one's son's mother in-law.

The same rule applies to one's *Rabeeb*. He is a step-son. If he marries a woman, then the step-father is allowed to marry such a step-son's wife should he divorced her or should she be widowed.

We now understand how the *Musaaharah* becomes *Haraam* through marriage. one must understand that the *Hurmatul Musaaharah* حرمة المصاهرة (decree of *Haraam* for marriage between in-laws) only becomes confirmed when an *Aqdus Saheeh* (a proper marital contract) was contracted. However, if a marriage was contracted between two people which was declared null and void, or it was a consummation through a judicial error, or through *Zinaa'*, then the following rules must be clearly observed:

- 1) The *Hurmatul Musaaharah* becomes *Waajib* if a marriage contract was incorrectly performed known as *Aqd Faasid* and the marriage was consummated. So, if a man contracted a marriage with a woman and has sexual relations with her and are under the impression that such a marriage was correct, then such a woman's mother will become *Haraam* for him.
- 2) If a man marries a woman with the understanding that the marriage was correct, but at a later stage discovered it to

be incorrect, and such a marriage was not consummated, then he may marry such a wife's mother. The deciding factor here is that the marital contract must be correctly performed right from the outset.

However, if sexual relations took place, be it *Haraam*, (i.e. anal sex), after an improper marital contract, then the *Haraam* decree remains valid.

Similarly one's step-mother becomes *Haraam* for one via the *Aqdus Saheeh*. But, should it be an *Aqd Faasid* and the father had consummated the marriage with the understanding that the contract was correct, then the step-mother remains *Haraam* forever. But, if no consummation took place, then the "step-mother" becomes *Halaal* for such a son for marriage.

The same rule applies to the daughter in-law only if the marital contract was *Sah* or *Faasid*, but, sexual relations took place.

The *Haraam* decree is therefore determined by *Musaaharah* by way of:

a) *Aqdus Saheeh*. عقد الصحيح

b) *Watt* through an *Aqdus Saheeh* or *Aqd Faasid* عقد فاسد

The same rules are applied to *Wat ush shubuhah* even if anal sex took place. This is strictly forbidden by Allah and decreed *Haraam*.

Note: During sexual intercourse between husband and wife, semen is deposited in the vagina. The wife thereafter indulges in a sexual act with a lesbian. This results in the husband's sperm being transferred from the wife into the vagina of the lesbian. This further results in the lesbian falling pregnant and after a

natural term, gives birth to a son. This child is now regarded as the lawful (Halaal) son of the man who initially performed the sexual act with his wife in accordance with the correct Aqd.

Similarly, if a man has two wives, and his first wife whom he has just had sexual intercourse with now performs an act of lesbianism with his newly wedded wife which leaves her pregnant. The daughter born to the second wife as well as her mother (his mother-in-law) will be regarded as Haraam for him. The Sharee-ah regarded this as though the marriage was consummated.

Note of Importance: The act of lasbianism is totally Haraam but it is not taken as Zinaa' because the sexual act did not take place. Even if such people are caught in the act and the matter brought in front of the Quadee cannot institute the death penalty, nor can he even decree the penalty of one hundred lashes each, because, no sex took place, instead stimulation and masturbation took place.

Concerning the act of Zinaa', no Hurmatul Musaaharah is confirmed here in any way whatsoever. This is based on the fact that marriage is a Sacred Favour bestowed upon us by Allah and it is incorrect to remove an act of marriage for an act that is unlawful. Thus, if a man commits Zinaa' with a woman, then her mothers and daughters are not Haraam for him to marry.

The same rule applies to situations where romancing, cuddling and fondling took place with an unrelated female, or, a person views the body of a strange unrelated woman with passion. Her off-spring or mothers do not become Haraam for marriage.

Wat ush Shubuhah with a woman under the assumption that she is the wife, is also termed *Shubuhatul Faa-il* (error of perpetrator). Such an act is not classified as either Halaal or Haraam. Thus, a child born of a result of *Shubuhatul Faa-il* is deemed legitimate

for all purposes e.g. the status quo as far as family relationship from his father's side remains unchanged. He inherits from such a father and even *Iddah* on his mother becomes necessary. Thus, any act which is deemed as sacred, the relationship in every respect remains firm. If a child is conceived through the act of Zinaa', and the new born child is a girl, then:

- a) She is regarded as illegitimate.
- b) The biological father can even marry such a girl because she has no bond with him. This is however *Makrooh*. The other three *Imaams* hold the view that such a child is illegitimate and cannot inherit, but, it is Haraam for such a biological father to marry his own "illegitimate" daughter.
- c) She does not inherit from him.
- d) The father is not liable for maintenance. Whatever is Halaal for the father, also becomes Halaal for his legitimate children.

It has been stated above, that it is *Makrooh* for the father to marry his illegitimate daughter because of the possibility that the children born from such a relationship will suffer congenital diseases.

Note: The illegitimate child has form relationship from the mother's side and inherit her all family from mother's side.

Circumstances under which Marriage will be Unlawful and thus Invalid

A marriage between two people of the same sex is invalid and it is *Haraam*. Similarly, it is *Haraam* for a man to be joined to two people in wedlock to the extent that should we compare them both to each other by regarding them both as males for instance, then we would find them to be *Haraam* for each other.

Example

Let us take two sisters. We know it is *Haraam* for us to be married to two sisters at one given time. Now we apply the rule for comparison. Let us now imagine one of the sisters to be a man. We would come to the conclusion that they are brother and sister and as such *Haraam* for each other in marriage.

Upon this the *Nabi* S.A.W. has said:

"Truly if you do that, you will *إِنَّكُمْ إِنْ فَعَلْتُمْ ذَلِكَ قَطَعْتُمْ أَرْحَامَكُمْ*
be severing your families ties"
رواه أبو داود وقال الترمذی حديث صحيح

The same applies to a man who wishes to marry his wife's aunt (from either parental side). The same procedure is adopted. Imagine the parental aunt to be a man. What is the relationship between the woman and that paternal aunt? It will now be uncle and niece and *Haraam* for them to marry each other.

We use the same method in establishing if it is *Halaal* when one wishes to marry another woman (while already married). Compare your first wife with this woman. Establish, if either of them had been a man, what would their relationship have been? If the one becomes a *Mahram* for the other, then we know it will be *Haraam* for them to be joined in wedlock. And if no relationship can be established through the concept of comparison, then

marriage between the two of them would be legal.

It is *Halaal* to join the following two persons in marriage:

A woman together with the daughter with the daughter of her former husband. Example

A married couple has a daughter. Upon divorce, the man marries another woman. This daughter of his now becomes the step-daughter of his second wife. After a while the man divorces his second wife as well. Another man is now allowed to marry this divorced woman together with her step-daughter. Apply the rule of comparison then we will find that there isn't any family ties between these two womenfolk.

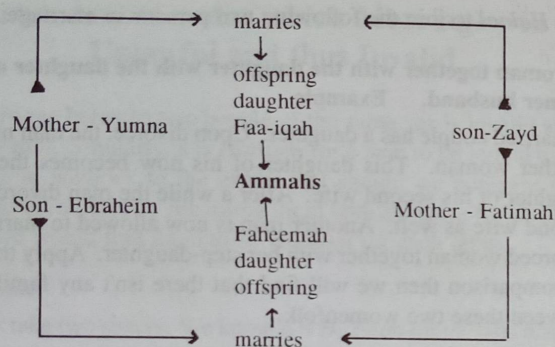
The very same rule applies to a man who has divorced his wife and whose mother is also alive (i.e. the husband's mother). Another man may marry this divorced woman and may also marry this woman's mother-in-law. Apply the rule of comparison then we will find that the two womenfolk being joined in marriage to one particular man have no family ties whatsoever.

It is *Haraam* for a man to marry *Ammatayn* (two father's sisters) or *Khaalatayn* (two mothers sisters) at one particular time.

Example of Ammatayn being joined in wedlock which is Haraam.

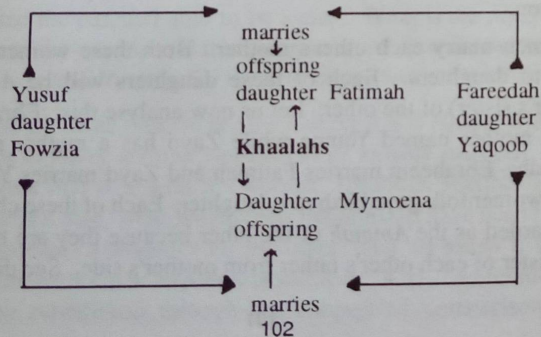
Two men marry each other's mother. Both these women gave birth to daughters. Each of these daughters will be *Ammah* (father's sister) of the other. Let us now analyse this. Ebraheem has a mother named Yumna while Zayd has a mother named Fatimah. Ebraheem marries Fatimah and Zayd marries Yumna. Both womenfolk gave birth to a daughter. Each of these children is regarded as the *Ammah* of the other because they are brother and sister of each other's father from mother's side. See diagram

for illustration.



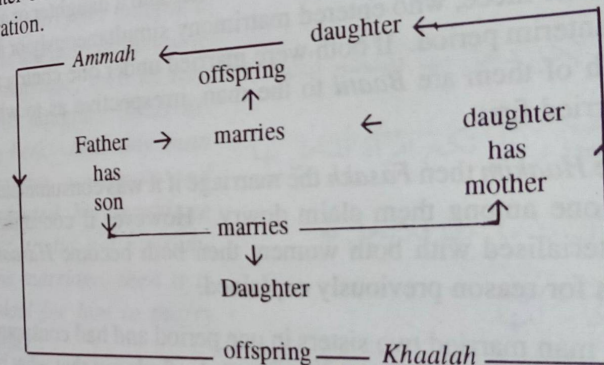
An Example of two Khaalahs Haraam to join in marriage

Two men marry each other's daughter. Both these women gave birth to two daughters. The one girl will be the other's *Khaalah* (aunty from mother's side). Let us analyse this. Yusuf has a daughter named Fowzi-yah while Ya'qoob has a daughter named Fareedah. Both these womenfolk gave birth to a daughter each. The one daughter will be the *Khaalah* of the other because both of them are granddaughters to each other's father from mother's side. See diagram which clearly illustrates this point.



It is also *Haraam* for a man to marry two women at one time while the one woman is the other's *Ammah* and the other woman is the other's *Khaalah*.

Example: A man marries a woman and this man's son marries this woman's mother. In other words the son married his father's mother-in-law. Both these women gave birth to a daughter each. The daughter of the son will be *Khaalah* of the daughter of the father and is also at the same time the sister of the other's mother. The daughter of the father again will be the *Ammah* of the daughter of the son and the sister of her father. See diagram for illustration.



On this the *Nabiy S.A.W.* has said:

"No man should marry a woman and to thereafter marry her paternal aunt (or even maternal aunt) during one period. And no man should marry an aunt and at the same time, marry her brother's daughter (niece).

لَا تُنَكَحُ الْمَرْأَةَ عَلَى عَمَّتِهَا وَلَا أُمِّهَا

عَلَى بِنْتِ أُخْتِهَا لَا الْكُبْرَى

عَلَى الصَّغْرَى وَلَا الصَّغْرَى

Not an elderly over a minor
and neither a minor over an
elder".

رواه أبو داود وقال الترمذی حدیث حسن صحیح

Here it is meant marry not an elderly aunt together with her niece who is still a minor or vice versa. The same rule also applies to womenfolk who has foster relationship known as Radaa'.

If a man was married to two women who are *Haraam* to be joined together in wedlock, because, they are closely related to one another, then such a marriage must be *Fasakhed*. The women in this case are either two sisters, a mother and a daughter or an aunt and her niece, who entered matrimony simultaneously or during an interim period. If both were married under one contract, then both of them are *Baatil* to the man, irrespective as to who got married first.

The *Haakim* then *Fasakh* the marriage if it was consummated and no one among them claim dowry. However if consummation materialised with both women, then both become *Haraam* for him for reason previously explained.

If a man married two sisters in one period and had consummated such a marriage and only afterwards he finds out that what he did was unlawful, then both of them will become *Haraam* for him immediately. Separation is necessary and only thereafter is he allowed to choose anyone among the two sisters to marry him. Remember this law, when sexual intercourse takes place upon an *Aqd Faasid*, then in such a case, certain people now become *Haraam*.

If a man marries a mother and daughter at the same time and he slept with the mother, then the daughter becomes *Haraam* for him forever, irrespective of whether it was an *Aqd Faasid* or an *Aqd Saheeh*. But, if the man did not sleep with the mother yet, then

عَلَى الْكُبْرَى

the daughter will be *Halaal* and the mother will become *Haraam* if he sleeps with the daughter upon a *Nikaah Faasid*.

Note: A mother does not become *haraam* through a *Nikaah Faasid* of a daughter when no consummation took place.

The above is based on the statement made by the *Nabiy S.A.W.* when he said:

"Any man who marries a woman and consummated that marriage, then it is not lawful for him to marry her daughter. And if he did not consummate such a marriage, then let him marry her daughter (after divorcing her). And any man who marries a woman and consummated his marriage with her or did not consummate the marriage, then it is not *Halaal* for him to marry her mother".

رواه الترمذی

أَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً وَدَخَلَ بِهَا
فَلَا يَحِلُّ لَهُ نِكَاحُ ابْنَتِهَا، وَإِنْ
لَمْ يَكُنْ دَخَلَ بِهَا فَلْيَنْكَحْ ابْنَتَهَا،
وَأَيُّمَا رَجُلٍ نَكَحَ امْرَأَةً فَدَخَلَ بِهَا
أَوْ لَمْ يَدْخُلْ بِهَا فَلَا يَحِلُّ لَهُ
نِكَاحُ أُمِّهَا

We also know that it is *Waajib* for the man to give the *Mahrul Mithl* if the marriage was consummated upon an *Aqd Faasid*. The dowry is given after sex took place and not at the time of the *Aqd*.

If *Wat ush shubuhah* was committed on numerous occasions prior to it being realised that a judicial error was committed, then only one dowry (*Mahrul Mithl*) is required, irrespective of the number of times the act was committed.

In the event of a separation, and the couple later committed the said error again, then it will be regarded as a totally different *Wat ush shubuhah* thereby requiring a new dowry (in the form of

average, sustained as a result of religious differences.

Mahrul Mithl). Example: should it occur that the man has erroneously married two sisters, and discovered the error later and then made a separation. After that he married the one of his choice. That night he inadvertently beds the separated sister thinking her to be his wife. In this case the states that a new *Mahrul Mithl* must be given again.

The second type of *Wat ush Shubuhah* is called **Shubuhatul Faa-il** شبهة الفاعل (error of perpetrator). The first type of error which was performed because of an *Aqd Faasid* is called **Shubuhatul Tareeq** شبهة الطريق (Error of direction/path). There is also a third type of *Shubuhah* called **Shubuhatul Mahal** شبهة المحل (error of place). Example: A man had sex with his son's slave woman under the assumption that whatever belongs to his son, belongs to him also, whereafter, the truth was established, then in this instance too will the *Mahrul Mithl* be required as the dowry.

Remember, any sex taking place without *Shubuhah* does not cause a dowry to be necessary e.g. a man overpowered or forced a woman to have sex with him, or, he even slept with her while she was asleep, this will then be regarded as *Zinaa'*.

The above rules are applied when the *Aqds* were performed simultaneously. If it can be established with absolute certainty as to whose contract was entered into first, then the second contract becomes *Baatil*. However, should doubt arise in this case, then it is *Wajib* to separate immediately and refrain from sexual relationship until such time when the matter is resolved. Similarly, if it cannot be resolved as to whose marriage was firstly contracted, then it is *Haram* for the man to remarry any of them unless he divorces them both or he dies.

But, if hope is given in establishing whose contract was first solemnized, then the matter is referred to the *Haakim* who *Fasakhs* the marriage with the purpose of repelling any harm.

Marriages Prohibited as a Result of Religious Differences.

People who differ in belief to that of Muslims are categorised into three groups:-

- 1) **Ubbaadul Authaan** عبادة الأوثان (idol worshippers). Marriage between Muslims and idol worshippers or Polytheist are prohibited. By idolatry we understand the keeping and retaining of idols for purposes of invocation, adoration and honouring by a worshipper or worshippers.

In other words, they are a people who have not received any heavenly scriptures and neither do they have a book in likeness to any heavenly scriptures.

It is also of no consequence whether these idols are carved from wood, stone, silver or any other precious stones etc..

Concerning *Asnaam* أصنام (images) which are being adorned, falls under the banner of *Ubbadul Authaan*. There are *Ulamaa'* who do not differentiate between these two terms meaning that the worshipper is venerating the saint or gods whose likeness it bears and not Allah.

The remotest incentive to idolatry images, be it the sun, the moon or the stars, are severely forbidden to the Muslims. It need scarcely be said that this type of worship and invocation of created things is in the degree of dishonouring Allah.

Note: Apostates (*Murtads*) fall under the same category because they do not believe in the doctrine fundamental of Islaam. If we by way of example consider the "Rawwafid" (A sect of the Shia). They believe that Sayduna Jibreel Alayhis Salaam erred in delivering the divine revelation to Sayduna Muhammad S.A.W. instead of Sayduna Aliy Karramal Laawhu Wajhah. Some of

them even cherish the doctrines that Sayduna Aliy K.W. is an Ilah (god) while others dispute the authenticity of some Quranic verses. The Shee-ah Imaamiy-yah goes so far as defaming the honour and morality of the Holy Prophet's wife Sittina AA-I-Shah by accusing her of adultery even though the Holy Qur'an states the contrary.

The Saabi-ah صابئه (Saa-bi-een - Sabaist or Sabians) starworshippers falls in the above category and as such are prohibited for marriage. Historically there exists the belief that this sect had a book which is not to be traced today and as such, some are of the opinion that because of a book they are lawful for marriage which is not the case.

The Ahmadiyas i.e. Quaadiyaanis, Mirzais, as well as Bahaa-is all fall under the banner of Mushrikeen because certain fundamental doctrines of Islaam are being violated.

- 2) The Majoos مجوس (Fireworshippers). Originally they had a book. They compare this book with the divine revelation. They claimed it to have been authoritative; the word of God; and revealed to their Prophet Zeraadashat زرادشت. With the passing of time they misconstrued, distorted and corrupted its contents and also killed their own Prophet. Allah then removed the book from them.

Marriage is thus forbidden to a member of such a group. The four *Imaams* are in agreement on this point. *Imaam Dawood Ath Thaw Hiri* امام داود الظاهري claims that it is permissible for us to marry them, because, they did originally receive a book. Of course this is not authentic.

- 3) Those who are people of the Book. This is referred to the *Yahood* and the *Nasaaraa* (Yahood-Jews Nasaarah-Christians) who received the *Toraah* and the *Injeel* (Bible).

Marriage to a member of such a group is permissible subject to certain rules:-

- a) It is permissible to marry a Muslim to a *Kitaabiyah* (a Jewish or Christian girl). However, the rule states that it is *Haraam* for a Muslim female to marry a member of this group. The condition which is a pre-requisite for the correctness of the marriage of a Muslim woman is that her husband must be a Muslim. Proof of this is obtained from the Holy Qur'an wherein Allah says:-

"Do not marry unbelieving women (idolaters) until they believe. A slave woman who believes is better than a Polytheist woman even though she astonishes you. And marry not your girls to Mushrik (men) until they believe. A man slave who believes is better than a Mushrik man even though he may cause you astonishment".

وَلَا تَنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا

وَلَأَمَةٌ مُؤْمِنَةٌ خَيْرٌ مِنْ مُشْرِكَةٍ

وَلَوْ أَعْجَبَتْكُمْ، وَلَا تَنْكِحُوا

الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا، وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِنْ مُشْرِكٍ وَلَوْ أَعْجَبَكُمْ

Suratul Baqarah (Verse 221)

These two verse clearly indicate that it is not *Halaal* for a Muslim man to marry a *Mushrik* (polytheist woman) in any way and likewise it is not *Halaal* for a Muslim woman to marry a *Mushrik* man. This is only allowed if such people embrace Islaam.

Proof that Muslim Males are Allowed to Marry *Kitaabiyahs*. Allah says:-

"Lawful unto you in marriage

وَالْمُحْصَنَاتُ مِنَ الْمُؤْمِنَاتِ

are chaste women among the believers, as well as chaste women among the people of the Book who received their revelation before your time, when you give them their dowry desiring nothing but chastity and not lewdness nor other secret intrigues".

Suratul Maa-idah (Verse 5)

This verse makes it quite clear that Muslim males are allowed to marry Christian or Jewish women even though they claim that *Sayduna Eesaa* (Jesus) is a God or is one in the Trinity which of course is clear Shirk. The majority among the *Ulamaa'* agree on this because of the fact that Allah knew this situation even as the Holy Qur'an was revealed, yet, Allah made it permissible because they do have a heavenly religion and a book.

Others argue that the reason for Allah having allowed this is because the woman who is a *Kitaabiyah* will be the odd one out in the family. Here it is meant that children originating from such marriages will hold the name of the father. The father will see to their education and he will teach them Islaam which will finally result in the mother having no other alternative later but, to accept Islaam. In Muslim countries, custody is given to the father should there be a split between the two people involved.

But in countries where the situation is reserved, more damage is done if there is a separation. The children is given to the mother which will result in the children being raised as Non Muslims. This is quite common in South Africa. Even with women embracing Islaam who later become apostates and they then leave

وَالْمُحْصَلَاتُ مِنَ الَّذِينَ أُوتُوا
الْكِتَابَ مِنْ قَبْلِكُمْ إِذَا
آتَيْتُمُوهُنَّ أَجُورَهُنَّ مُحْصِنِينَ
غَيْرَ مُسَافِحِينَ وَلَا مُتَّخِذِي
أَحْدَانٍ

their husbands taking their minor children with them and raising them as non Muslims.

This situation from the Muslim point of view is horrifying and therefore, some *Ulamaa'* state that marriage which bear such consequences are *Haraam*. This view should be encouraged and should also be held in *Esteem*.

Here are certain guidelines for Muslims for follow:-

1) It is *Makrooh* for a Muslim to marry a *Kitaabiyah* in a Muslim state. The *Makroohship* is of even worse magnitude if it is contracted where Muslims and Non Muslims are at war *Daarul Harb* دار الحرب. The *Makroohness* is subject to the following conditions:-

- When the Muslim has given up all hope of his wife embracing Islaam.
- When there are no other Muslim women whom he deems fit for marriage.
- He fears adultery should he delay this marriage.

Thus, if the person hopes and have sound reason to hope that the woman will embrace Islaam, then such a marriage will be deemed *Sunnah* and not *Makrooh*. Likewise, it is *Sunnah*, if no suitable Muslim female is to be found or when the person fears *Zinaa'* should the marriage be delayed.

There is a factor which influences the authenticity of such marriages. This is that both parents of the spouse should be *Kitaabiyahs* (Jews or Christian or both). However, if the father is a *Kitaabiy* and mother *Watha-Niyah* وثنية (idol worshipper), then such a marriage is *Haraam* when the girl being spoken of, chooses the religion of her father when she became *Baaligh*.

One can clearly see from the above, that this question revolves around what is best in the religion and what is bad. If it is benefecial, then it is commendable and if it is that it could possibly lead to evil, then it is deemed *Makrooh*. But, if one is sure that it will definitely lead to evil, then it is *Haraam*.

The Discussion of a Woman who has been Thrice Issued with a Divorce Decree

And the *Hukum* of how she can become *Halaal* for him once again.

A *Talaaq* pronounced thrice is irrevocable. The only option open for a reconciliation to be effected is when the wife in the meantime remarries someone else and he in turn divorces her of his own free will after consummating the marriage. There should be no collusion of compulsion in this *Talaaq*. Allah says:-

"And if he had divorced her 'thrice', then she does not become *Halaal* for him until she has married another husband besides him".

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

Suratul Baquarah (Verse 230)

It is not necessary that the second husband should have the *Niyah* of living with her continuously. In fact she becomes *Halaal* for her first husband even if the second husband has in his mind the idea that he is marrying to make her *Halaal* again for her first husband. Such a person is termed by the Jurist as a *Muhallil* (one who has married a woman and made her *Halaal* for her first husband).

There has been much dispute over this over the years. It is also a known fact that there were people and there are still others around who are well known for contracting such marriages. The whole facade is arranged with the third party being remunerated for services rendered. The second husband contracts such a marriage and he waits for the instructions of the first husband to notify when to divorce her.

This un-Islamic act has been and is still being perpetrated by unscrupulous hypocrites. The *Sharee-ah* abhors and deprecates such heinous acts. It is not only totally *Haraam* but an absolute disgrace to enter into such arrangements to satisfy one's sexual lusts. The Holy Qur'an reminds us that even animals with no intelligence whatsoever are better classified than them. The *Nabiy S.A.W.* has said:-

"Allah has cursed the one who marries (with the sole idea) to make a woman *Halaal* for her former husband and so too is the one cursed for whom the woman is made *Halaal* for".
عَنْ عَلِيٍّ أَنَّ رَسُولَ اللَّهِ (صلى الله عليه وسلم) قَالَ لَعَنَ الْمُحِلَّ وَالْمُحَلَّلَ لَهُ

رواه الترمذی

In another Hadeeth, the *Nabiy S.A.W.* says:-

"Should I notify you of the *Tais* Al *Musta-aar*? (He is a *PIMP* i.e. a person who gets paid for being a go between for prostitutes who drives their income from *Haraam*). They said: "Yes, O! Messenger of Allah". The *Nabiy S.A.W.* said: "He is the *Muhallil*. Allah has cursed

أَلَا أُخِيرُكُمْ بِالتَّيْسِ الْمُسْتَعَارِ؟

قَالُوا بَلَى يَا رَسُولَ اللَّهِ، قَالَ

هُوَ الْمُحَلِّلُ، لَعَنَ اللَّهُ

the Muhallil and the one for whom the woman is made Halaal for".

رواه البخارى

الْمُحَلِّلُ وَالْمُحَلَّلُ لَهُ

This Hadeeth makes it quite clear that he who contracts such a marriage with the sole purpose of tasting a woman in a Halaal way, thereby using the Sharee-ah as an excuse, is cursed by Allah. We may be able to get away with it here in the Dunyaa, but, remember Allah knows what is concealed in our hearts and on the Day of Judgement, Allah will notify us even about our thoughts.

Factors which are regarded as Noble by the Sharee-ah and which has to be observed when contracting such a marriage.

- 1) It must not be a set up.
- 2) It must be done with noble intentions and not for sexual motives.
- 3) To bring peace and reconciliation between two people.
- 4) To obviate the suffering which would prevail should they (the couple) be separated from each other, and more so, minor children who will be suffering the most.
- 5) There should be no remuneration or any other material reward involved.
- 6) The person who married such a woman must not be one who is well known for contracting such marriages.

If the above factors are observed, then there can be no dispute that such a marriage is deemed sacred and that such a person will be well rewarded by Allah.

Shuroots Governing the Correctness of such a Marriage

- 1) That the second Aqd must be an Aqdu Saheeh (correct marriage). If the second contract was an Aqd Faasid or the women who slept with through Shubuhah or through Zinaa', then she will not be Halaal for her first husband. Allah says:

"Then she does not become Halaal for him until she marries another husband".

فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجًا غَيْرَهُ

Without dispute, the verse indicates marrying which makes one to understand it to be a proper marriage contract.

- 2) That the intention of such a marriage must not be stated in the marriage contract i.e. that the man says:

"TAZAW WAJTU MARIAMA BISHARTI IHLAA LIHAA LI MUTAL LIQIHAA".

تَزَوَّجْتُ مَرِيَمَ بِشَرْطِ إِحْلَالِهَا لِمُطَلِّقِهَا

"I have married Mariam with the condition to make her Halaal for the one who has divorced her".

If this is done, the Aqd becomes Baatil. If on the other hand the man marries a woman without any conditions at the Aqd, but he has in mind the fact that he will make her Halaal for her former husband, then it is Halaal but, Makrooh.

- 3) That the man whom the woman marries must be one who is able to consummate a marriage even though one is not Baaligh yet.

Note: It is not necessary for ejaculation to take place. Neither is

it a rule that the one the woman marries should be sane. Even an insane person is allowed to marry such a woman, providing, he has the ability of consummating the marriage.

It is also not a rule that the second husband should be a Muslim. If for example the man married a kitabiyah, and divorces her thrice, whereafter she remarries a Thim Miy (Christian under Islamic Government), who divorces her after consummating such a marriage, then she becomes Halaal for her former husband.

It is also not a rule, that the woman should marry a free man. If she marries a slave whose master had given permission, then the Aqd is also correct.

It is also not necessary for a complete sexual act to take place which includes stimulation. It is even sufficient, for example for the man to place the tip of his penis (that portion of the penis which is exposed subsequent to the circumcision of the foreskin) in the woman's vagina.

Sittina Aa-ishah reports that the wife of Rifaa-ah Al Qurathiy, came to the Nabi S.A.W. and said:-

"I was with Rifaa-ah and he divorced me. I then completed my Talaq (Iddah) thereafter Abdurrahmaan the son of Zubair married me and he is kind of impotent". The Nabi S.A.W. smiled and said: "Do you wish to return to Rifaa-ah? No! not until you taste¹ of him and he tastes of you".

رواه البخارى

4) That the sex should take place in the woman's vagina to

such an extent that the male organ should penetrate past the point of the hymen. If for example, the woman is a virgin, then the least sex will be for the husband to break her hymen.

The woman will also not be Halaal for her first husband if the second husband has had anal sex with her. She will also not be Halaal for her first husband if the second husband is unable to have an erection and to just merely ejaculate on her. However, a person who was castrated and who has sexual relations with such a woman, she will still be Halaal for her former husband.

It is also not a rule that the erection must be maintained and neither is it a rule that the male organ should be uncovered. If a prophylactic is used, then no harm is done.²

*1. The word Usailah is explained as follows:

أَقْلُ مَا يَكُونُ مَنْ تَغَشَّى الرَّجُلُ بِالْمَرْأَةِ

"At the very least the man can envelop himself over a woman when having sex" This information is obtained from the "Tafseer Al Maraaghee" page 174 Second Volume "Suratul Baquarah".

*2. Preventing pregnancy is also allowed by the Sharee-ah. this is based on the following testimony which is reported by Sayduna Aboo Hurairah who said:-

"We used to practice the Azl (when a man about to ejaculate removes his private organ from his wife) during the time of the Nabi. This information reached him, but he did not prohibit us".

The use of a condom or prophylactic is allowed on the basis of Qiyaas (comparison).

كُنَّا نَعْزِلُ عَلَى عَهْدِ رَسُولِ اللَّهِ (صلى الله عليه وسلم) فَبَلَغَ ذَلِكَ نَبِيَّ اللَّهِ

The Discussion when a Nikaah is performed to a certain proviso or it is limited to a specific period.

When a Nikah is subjected to a specific proviso, then the *Aqd* is *Baatil*. Example if the person says: "If my wife gives birth to a daughter to you". In this case the *Aqd* will be *Baatil*.

However, there are Shuroots connected to the *Aqd*. These are divided into two sections:-

1. Certain provisos which are *Baatil* and which nullify the *Aqd*.
2. Provisos which are correct.

Provisos Which are Incorrect

- 1) When the husband makes a proviso in the *Aqd* that he marries a woman who is a Muslim while he is a *Thim-miy*.
- 2) That the wife to be should be under *Iddah*.
- 3) That she should be pregnant from someone else.
- 4) The *Nikaah* will also be *Baatil* if she marries a man with the proviso that she only marries him on condition that he does not have sex with her.

However, if the husband states this in the *Aqd*, and she accepts, then the *Aqd* will not be invalid. The difference here is that the sex is her prerogative. So if she is satisfied, then no harm is done. Likewise, if she is satisfied to marry one who is impotent or one who has been castrated, then it is her prerogative.

Provisos Which are Correct

These are any rules of physical description which does not prevent the correctness of the *Aqd* from becoming void. Example:

- (a) Beauty.
- (b) Virginity.
- (c) Freedom.
- (d) White complexion/fair in colour.
- (e) Brown skinned or dark complexion.

If a man marries a woman and says: "I am marrying Khadeejah on the condition that she is beautiful, free, a virgin and that she be brown skinned". After the *Nikaah*, he finds out that she is totally the direct opposite of his expectations, then the contract is still valid, but he has the choice.

he may if he so wishes, continue the *Aqd* or he may *Fasakh* the *Aqd*. If on the other hand the man gave certain descriptions of what he wants his wife to possess, and afterwards it became clear that she possesses higher or nobler descriptions, or she has similar attributes to what she has been described to, then the marriage is correct and the man shall have no *Khiyaar* (choice) in this instance.

The same rule applies to the woman. If she has stipulated that the husband she marries should be fair in complexion, handsome, tall and a virgin, and these conditions are mentioned outside of the *Aqd*, then one does not act accordingly. If it also happens that a *Waliy* married a man saying to him "O Muhammad, I have married you to this daughter of mine whose name is Bahiyah and she is a virgin". The man accepted and thereafter, he discovered that he had been cheated by the *Waliy* that the woman is not a virgin. he has the right to annul the marriage. If he *Fasakhs* the marriage before consummation, then no *Sadaaq* is necessary and nothing is required concerning the rights of marriage.

But, if the husband nullifies his marriage after the marriage has been consummated, because only then did he discover the woman

to be a *Thay-yib* and not a *Bikr*, then he has to give her **Mahrul Mithl**. He also has to provide her with *Nafaquah* while she undergoes her period of waiting. He should also provide her with clothing for the stipulated duration as well as a house where she may undergo her *Iddah*. He has no right to reclaim from the *Waliy* who has cheated him.

Marriage for a Time Limit also known as Nikahul Mut-ah

This chapter will be discussed under the following headings:

- 1) Is there any difference between *Nikahul Mut-ah* نِكَاحُ الْمُتْعَةِ and *Nikaahul Mu-aqqat* نِكَاحُ الْمُؤَقَّتِ (time limit)?
- 2) What is the true nature of both?
- 3) What is the *Hukum* of both?
- 4) How did the *Nikahul Mut-ah* become a legal act originally?

Note: *Mut-ah* is derived from the word *Mata-a* مَتَعَ which signifies pleasure "enjoyment". So *Mut-ah* actually means a usufruct marriage for a specified time and exclusively for the purpose of sexual pleasure.

The *Jumhoor* (majority) of *Ulamaa'* of the *Shaafi-iy* hold the view that there is no difference between *Nikaahul Mut-ah* and *Nikaahul Mu-aqqat*. They say that if a *Waliy* says to a man "I have married you to so and so for a period of one month", then it is regarded as *Nikaahul Mut-ah*.

The same applies to a situation where the marriage contract was contracted until a woman's life span. The reason for this is that the marital bond is binding even after death. Therefore, it is allowed for the husband to *Ghusil* the deceased wife or vice versa. There is also the inheritance factor which materialises after death.

So, if it is that the marriage is contracted until death, then the *Aqd* will be *Baatil*, because it will mean that when death occur, all traces of marriage immediately ceases.

Some other *Ulamaa'* are of the opinion that there is a distinct difference between the two. They accept the viewpoint held by **Sayduna Abdullah Bin Abbas** who said: "*Nikaahul Mut-ah* is a marriage where there is no *Waliy* or witnesses present participating in the marriage contract. It is only the two parties involved. The whole aim of such a contract (if it can be even called a contract) is specifically designed for sexual pleasure and enjoyment, because, if the aim and objective was for inheritance or having children, then they would have brought the *Waliy* and the witnesses into operation.

The true nature if *Nikahul Mut-ah* is that the contract holds a proviso of a specified time limit. This is *Haraam* and *Baatil*, irrespective of whether there are witnesses or not.

The *Hukum* of *Nikahul Mut-ah* and the marriage for a limited time is that it is *Haraam* and *Baatil*. If someone is found guilty of such an act, then the *Haakim* has the prerogative to severely reprimand or to even chastise such a person accordingly. However, the *Haakim* cannot execute the *Hadd* حَدُّ (penalty) of stoning such a person to death or giving either one or both one hundred lashes.

The origin and legality of this decree became effective only for a

short spell when the Muslims were few in number and at the outset of Islaam. The Muslims were in continuous strife and battle with the **Kuffar**. It was a period in the history of Islaam when it was difficult and even impossible for its men to uphold the laws of marital life. This was particularly noteworthy in the beginning when money, a means of maintenance and support were scarce. The Quraish did not even want to trade with the Muslims. For this reason it was not even practical for them to even consider establishing a home.

Besides, they were still steeped in Paganism and evil customs. They were so fond and even infatuated by women that when many of them embraced Islaam, they had a number of women under their wings. Whom they approached at any time they liked. So, what will such people's attitudes be at war? It was only natural that a specified law be decreed for them. So, instead of them committing adultery, the *Nikaahul Mut-ah* was formulated to save them from hardship they were experiencing.

The other alternative was that a Muslim should fast. But, because, they were continuously engaged in battles, it would have been physically detrimental to the fighting forces to fast in order to suppress their sexual urge and at the same time, fight a war against the mighty Quraish, and also at times outnumbered by their enemies. It is for this reason, that the Holy Prophet S.A.W. allowed this type of *Nikaah*.

It has been reported by 'Muslim' who said Subrah said:

"The messenger of Allah instructed us to perform the *Nikaahul Mut-ah* during the year of victory (when Makkah was taken over) when we en-

أَمَرَنَا رَسُولُ اللَّهِ (صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ)
بِالْمُتْعَةِ عَامَ الْفَتْحِ حِينَ دَخَلْنَا
مَكَّةَ ثُمَّ لَمْ نَخْرُجْ حَتَّى نَهَاَنَا

tered Makkah, and after that even before we left Makkah, he prohibited us therefrom".

رواه مسلم

This Hadeeth is very clear that it was a decree specified for a particular time for the necessity of war.

Ibn Majah reports that the Nabi S.A.W. said:

"O people! I gave you permission to enjoy yourselves (with women), truly Allah has made it Haraam until the Day of Judgement".

رواه ابن ماجه

يَا أَيُّهَا النَّاسُ، إِنِّي كُنْتُ أُذِنْتُ
فِي الْإِسْتِمْتَاعِ، إِلَّا وَإِنَّ اللَّهَ
حَرَّمَهَا إِلَى يَوْمِ الْقِيَامَةِ

It has been reported that Sayduna Abdullah Bin Abbas allowed the *Nikaahul Mut-ah*, declaring it to be *Jaa-iz*. The truth is, that he allowed it before the message was given to him that it had been forbidden.

Here is a report of what transpired between Abdullah Bin Abbas and Abdullah Bin Zubair when they had a squabble on this issue. Ibn Zubair said, "I cannot see and understand why people can be so blind as though Allah has made them blind to say the *Nikaahul Mut-ah* is *Halaal*" (intimating at Ibn Abbass because he closed his eyes). Ibn Abbaas replied: "You are rude and uncivil, I saw the *Imaam of Taqwa* (piety) Rasoolul Laah making it *Jaa-iz*". Ibn Zubair replied: "I swear by Allah, that if you do it, I will surely stone you to death". This clearly indicates that Ibn Abbas at this point in time did not know that this law was abrogated.

But, when he received the confirmation, he stepped down from his opinion. It has been reported that Saa-eed bin Zubair said: "Ibn Abbas stood up, addressed the people saying": "The *Nikaahul Mut-ah* is like carrion, blood and like the flesh of pork".

This indicates the extremity to which he went to emphasise that it is a prohibited act.

The Discussion of the Sadaaq

Its Ta'reef (definition) مهر صداق

Sadaaq (dowry) is known as *Mahr* (stake given to the bride). *Sadaaq* is derived from the word *Sadaquah* which means to give alms voluntarily. It signifies the dowry given by the husband to his wife with a sincere consciousness of love and understanding, hoping and trusting that Allah will grant him the power and ability to shower his wife, in future, with sufficient sustenance, through the *Barakah* (blessing) of the sacred *Aqd*, to provide his wife with ever so more in the future with the same sincerity as he did on his wedding day.

According to the *Sharee-ah*, *Sadaaq* or *Mahr* is termed as the money which is necessary to be given to a woman when a marital contract takes place in exchange of having relations with her. It is also to be given for a *Nikaah Faasid* or for a *Wat ush shubuhah*. It is even given for a marriage having taken place although consummation did not materialise.

Sadaaq is also *Waajib* for a man to give it to someone whom he married but through some legitimate reason, he lost that part of the woman's body he owned, e.g. A *Waliy* married his daughter who is still a tiny baby to a man. This man took the child and his mother gave suck to the child which makes the child now his foster-sister. She immediately becomes *Haraam* for him, but this

child must now get the *Mahrul Mithl*. The husband now gets half of the *Mahr* because he did not and could not consummate the marriage.

Another form of *Sadaaq* which is necessary is that *Sadaaq* which goes to a husband, e.g. two witnesses gave false testimony that a certain man had divorced his wife thrice (*Talaaq Baa-in* طلاق بائن) or a *Talaaq Raj-ee* (revocable divorce رجعى طلاق). The *Haakim* then separated them and the *Iddah* also now expires. After a time the two witnesses retracted their testimony was based on falsehood. In this instance, it becomes *Waajib* for the two witnesses to pay the husband the *Mahrul Mithl* against whom they testified. It does not matter in this instance whether their false testimony took place before consummation of a marriage or even after.

The Shuroots of the Mahr

The rules of the *Sadaaq* are as follows:-

- 1) That the *Sadaaq* must be of monetary value. It should not be money which has no monetary value. One is not even allowed to use as dowry, granules of corn or anything which is valueless or which cannot really be utilised.

There is no specific maximum nor any specific minimum limit to be given. Even a handful of corn or flour is sufficient as *Sadaaq*.

It is however *Sunnah* that the *Mahr* should not be less than ten Dirhams.

"Sayduna Jaabir said: "The عن سيدنا جابر قال أن رسول الله

Nabiy S.A.W. notified them, that if a man gives a woman a Sadaaq, even a handful of food, then she will be lawful for him".

(صلى الله عليه وسلم) أَخْبَرَهُمْ لَوْ أُعْطِيَ
رَجُلٌ امْرَأَتَهُ صَدَاقًا مِلَّةً يَدِيهِ طَعَامًا،
كَانَتْ لَهُ حَلَالًا

رواه ابن ماجه

From the above we learn that the *Sadaaq* is not a requirement in itself for the marriage but that it is means of indicating to the husband that he is required to support his wife right from the outset.

- 2) That the *Sadaaq* must be Taahir (clean-Halaal). It must also be correct for usage. *Sadaaq* will not be regarded as Sah if it is given in the following items;

- (a) Liquor.
- (b) Pork.
- (c) Blood.
- (d) Carrion.

This is so on the basis that it does not possess any form of value in the eyes of the *Sharee-ah* because the *Sharee-ah* has decreed that it is *Haraam* for Muslims to own such things.

If the above mentioned items are mentioned in a contract, then the *Aqd* will be Sah, but the *Sadaaq* mentioned will be regarded as *Baatil*. In this case, it will be necessary for the husband to give his wife the *Mahrul Mithl*.

It is ofcourse that a man married a woman for a stipulated amount of *Sadaaq*, but, he only possess half and the other half does not belong to him, then whatever belongs to him is taken by the wife and that which he did not own becomes *Baatil*. After this, we look into the situation of that which he did not possess. If it was something which

had no benefit in it for usage, like blood, then whatever he possessed is taken and the rest which was mentioned will be regarded as superfluous.

On the other hand if the other half of the *Sadaaq* which did not belong to him was something which could be considered as something of value, like liquor for instance but considered *Haraam* by the *Sharee-ah*, then the wife can do one of the two things:-

- a) She may either *Fasakh* her *Sadaaq* by declaring it null and void if she did not previously know of this.
- b) She may accept the situation as it is if she did not know of it previously.

Should she declare her *Sadaaq* to be null and void, then she becomes eligible for *Mahrul Mithl*. But, should she accept the situation as described in clause (b), then whatever belonged to her husband, goes to her, and the wine forming the other half which was mentioned, is valued, and its value in cash form or any other *Halaal* form is given to supplant her dowry.

Another example may be given. If a man marries a woman upon the *Sadaaq* of fifty camels while this fifty camels form her *Mahrul Mithl*. half these camels belonged to the husband while the other half was stolen property. Without doubt whatever he possessed, now goes as part of her *Sadaaq*. The other half is now valued and she gets it in the form of cash, goods, promisory notes etc..

The above is a situation where her *Sadaaq* is mentioned and the items are the same but varies in price like the camels. The items are the same, but like camels, the price varies according to age, weight and its all round physical condition.

Now we come to a situation where the goods forming the dowry are the same in every respect and even in the price, e.g. A man marries a woman upon the dowry of ten kilos of Australian corn which form her *Mahrul Mithl*. half of this corn belonged to the husband and the half belonged to the neighbour. She now takes the five kilos which belonged to her husband, then she gets the other half in the form of *Mahrul Mithl*, irrespective if whether the other half in cash is equal to the half which was stolen or irrespective of whether it was less or more.

- 3) That the *Sadaaq* must not be Maj-hool (unknown). If the *Sadaaq* is mentioned which is not clearly defined either in its form or in its description e.g. A man marries a woman upon the *Sadaaq* to be either one of these dresses or horses or he says: "I have married you for a camel out of my herd of camels". Then whatever was mentioned as *Sadaaq* is incorrect and the woman gets her *Mahrul Mith*.

It is also not a rule that the *Sadaq* need be gold or silver only. It could be in the form of goods, animals, land, property or anything of value. It may even be in the form of education or even furniture.

As testimony to education, there is a happening which took place of a woman who came up to the Rasool S.A.W. and said that she had come the Messenger of Allah to give herself over in marriage to the Rasool should the Holy Prophet want her. The *Nabiy* looked at her for some time. One of the companions interrupted and said: "O Prophet, if you have no need for her, then marry her to me". The Holy Prophet then asked him what he had of dowry? He replied: "Nothing". He was sent home to further establish if he had anything of value to give this lady as dowry. He

returned saying that he had nothing. The *Nabiy* then questioned him as follows:-

"What do you have of the Holy Quran? He said: "I have this Surah and that Surah" and he counted it off. The *Nabiy* S.A.W. said to him: "Can you recite these by heart?" He replied "Yes". The *Nabiy* said; "Go, for I have married you to her upon that which you possess of the Holy Qur'an".

مَاذَا مَعَكَ مِنَ الْقُرْآنِ؟ قَالَ مَعِيَ
سُورَةٌ كَذًا وَسُورَةٌ كَذًا عَدَدَهَا،
فَقَالَ سَتَقْرَأُوهُنَّ عَنْ ظَهْرِ قَلْبِكَ؟
قَالَ نَعَمْ، قَالَ اذْهَبْ فَقَدْ أَنْكَحْتُكَهَا
بِمَا مَعَكَ مِنَ الْقُرْآنِ

رواه البخارى

The Following are Allowed as *Sadaaq*

- To teach or educate the wife in subjects of Fiqh or even any other subjects.
- To teach her a trade such as spinning, dressmaking, grading, pattern making etc..
- To make her clothing.
- To build her a house.
- To do her house work.

Remember the golden rule; "Anything which is of value is correct to be given as *Sadaaq*".

The following are the exceptions to the rule and it is not in conflict with whatever was mentioned above: Example: A

man marries a woman and states: "I am marrying you so that I can become your slave". Such a *Sadaaq* is incorrect and it causes the *Nikah* to be invalid. The reason for this is that it is not correct for a woman who possesses a slave (not servant) to marry such a person unless he is freed.

Example Two

A man who had sex with a slave woman under the banner of *Wat ush shubuhah*. This woman give birth to a son. This man then bought this slave woman who give him a son. The son became of marriageable age and the man gave his slave woman as *Sadaaq* to his son's wife. Such a dowry is null and void.

Here the reason is that this slave woman is this boy's mother, and when it comes to her child, she is regarded as a free woman and as such, unfit for *Sadaaq*, but, fit for any other transaction not related to her son.

Example Three

A man marries a woman for the clothing he wears which is the only clothing he is in possession of to cover his *Owrah*. Although his clothing has a value attached to it, it may not under any circumstances be used as dowry.

The Different Divisions of Sadaaq

Also under discussion is the *Nikaah Faasid* and when both are together in seclusion.

Sadaaq is divided into two types:

- a) A *Sadaaq* which becomes *Waajib* through an *Aqd* which is

- b) A *Sadaaq* which is necessary to be given when consummation takes place through an *Aqd* that is *Saheeh* or even *Faasid* or even through *Shubuhah* purposes.

Concerning the first kind of *Sadaaq* namely that which must be given through an *Aqdus Saheeh* is everything that was mentioned at an *Aqd*. Nothing less and nothing more. But, when the *Sadaaq* was not mentioned at the *Aqd*, then it is *Waajib* for the man to give the *Mahrul Mithl*.

There are also certain circumstances however, which causes the entire dowry to fall away and act at times even half falls away even though the *Aqd* was *Saheeh*. The entire *Sadaaq* falls away when the woman becomes *Murtad* or she did an act which causes her to become *Haraam* through *Musaaharah* purposes. In both instances, the *Sadaaq* falls away completely if this was established before the *Watt*. This is so because the separation become necessary because of her indulgence.

On the other hand, half of the dowry falls away when the husband divorces her wife before the *Watt*, when he is responsible for the separation. This results when he became an apostate or he does something which makes his wife *Haraam* through reasons of *Musaaharah*.

The entire *Sadaaq* in some other instances become *Waajib* and it cannot be said that because of certain circumstances, it could fall away in total or in part. Here we have two situations:-

- 1) When the *Watt* takes place. Here the *Sadaaq* becomes effective when the *Watt* takes place completely in the normal manner. The dowry also becomes necessary even when the husband has had anal sexual relations with his wife. Remember, this is totally *Haraam*. The *Nabiy*

S.A.W. has said:-

"Allah has cursed the man who goes to his wife via the anus".

لَعَنَ اللَّهُ مَنْ أَتَى امْرَأَتَهُ فِي ذُبْرِهَا
متفق عليه

Because of the *Haraam* act the husband has done, it does not forfeit the *Sadaaq* to be given.

Note: If the man disputes the fact that he had approached his wife "via the anus", then this word is taken into consideration by the *Hakim* providing he swears under oath.

When a man has been alone with his wife irrespective of what the time limit was, but he did not consummate his marriage, then it cannot be said or imagined that *Sadaaq* is due from his on the basis that they were in seclusion. According to *Imaam* Aboo Haneefah, being in seclusion is like the *Watt*.

The *Mahr* also becomes effective when the man had relations with his wife while she was menstruating or when she had *Nifaas*. This too is strictly forbidden by Allah. Allah says:

"They ask thee concerning womenfolk menstruating?". Say: "It is a pollution, so abstain from womenfolk while they are menstruating. And do not go near them until they are clean".

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ، قُلْ هُوَ
اذَى، فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ
وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ

Suratul Baquarah (Verse 222)

- 2) Another situation where the entire dowry becomes effective is when death occurs to one of them before *Watt* took place. It is of no consequence whether the death occurred naturally or otherwise. So, if a wife commits suicide or

the husband murders her, then the entire dowry still becomes effective. However, should the wife murder her husband, then no dowry is necessary. She also cannot claim any inheritance.

Note: No *Mahr* is given when a man marries a woman and artificial insemination took place e.g. the semen of the husband was taken in a tube and through this method pregnancy is caused, even if they were alone and had romanced. Should the husband divorce his wife after this, she is then only eligible for half the *Sadaaq*.

As for the second section of the *Sadaaq* which is to be given when *Watt* takes place either through an *Aqdus Saheeh* or an *Aqd Faasid*. When *Watt* takes place through an *Aqdus Saheeh*, then the entire *Mahr* is to be given. However, if *Watt* took place through an *Aqd Faasid*, then the following is taken into consideration.

It is said that a *Nikaah Faasid* is an *Aqd* which is void of a rule among the rules of marriage. As for a *Nikaah* which is *Baatil*, it is on the other hand a contract which is void of the principle from among the five principles of marriage. It is generally accepted by the *Shaafi-iyah Ilamaa'* that both these terms are decreed as one with no difference in between.

The Nikaahs Which are Regarded as Baatil

The *Nikaahus Shighaar*. This a type of marriage where one man marries his daughter to the other, while the other again marries his daughter again to him on the understanding that each of their daughters become the *Mahr* for one another.

Nikaahul Mut-ah. See page 69

Nikaah for one in Ihraam for Hajj or Umrah or both.

When a man marries off his daughter after having given two persons the right to find a suitable suitor for his daughter. Both these agents married her off to two different persons, but, it cannot be ascertain as to whom she was first married off to.

The cases as described above have no penalty decrees. In other words, these people cannot be penalised as being adulterers and so be stoned to death or chastised with one hundred lashes each.

Another form of *Nikaah Faasid* is the *Nikaah* of a woman who is under going her *Iddah* of either divorce or death, or even a woman called a **Mustabri-Ah** مستبرأة (One who is undergoing a period of waiting to ascertain whether her womb is free from pregnancy even through *Wat Ush Shubu Hah*).

In all above circumstances, No *Nikaah* should take place unless certainty is ascertained that none of them are pregnant and that the period of waiting had definitely elapsed.

If for example, a man marries a woman who falls under any of the above situations even though both of them are doubtful of the woman's condition, and sex was performed, then such a man and woman will both be penalised and will be subjected to punishment which will have to be meted out by the *Haakim* accordingly.

No *Iddah* in this instance and no family ties is established through such an *Aqd*. The children will be considered as illegitimate and as such, are not eligible for inheritance, and lastly, there is no *Sadaaq*. When such an *Aqd* takes place, it is considered as *Zinaa'*. The reason for this is that as long as the woman in under *Iddah*, she is bound to the bond of marriage and under the care of someone else.

As has been mentioned above, a contract taking place under the

above conditions is regarded as *Zinaa'*, unless those involved there in claim that they did not know and they are among those who may be excused for their ignorance, because, they live far away from the *Ulamaa'* and are not by any means able to travel to go and learn. Another excuse may be that they are among those who recently embraced *Islam*.

The same rule applies to a woman who is married and who is in doubt as to whether her *Iddah* has terminated or not. This could be possible when she finds sign of heaviness in her womb or even movement. Under such circumstances, she is not allowed to enter into any marriage transaction. Remember, as has been said before specifically in the first section is this *Kitaab*, that the man and the woman must both be free any condition or situation that will prevent them from contracting a marriage.

So, if a man contracts an *Aqd* with her under the above circumstances, then it is regarded as *Baatil*, even if it is conclusively established afterwards that there is no pregnancy. Always remember, that it is necessary that certainty **must be established beforehand whether both parties are Halaal for each other.**

Note: Here is an exception to the above rule. This is a case where the man goes missing for a long duration and his whereabouts are unknown to all. The man's wife then married another man before certainty was established as to whether he was dead or that he had actually *Talaaqed* her. After a while, his death is established or news is received that he had divorced her. In this instance, the second *Aqd* is classified as *Sah*. The reason for this is that the wife is not allowed to marry any other man until such time she had undergone her *Iddah*. So, it is only evident that the *Haakim* should have declared the husband as dead or subsequently issues her with a *Talaaq* or *Fasakh* decree, whereafter she undergoes her *Iddah*.

Thus, before she actually got married. She was one hundred percent sure that she was not pregnant and that there was nothing which her former husband may have left behind in her.

It is also clear from the above example that the *Sharee-ah* looks at the position of the woman and not at anything else. Another form of *Nikaah Faasid*, is when a man marries a *Watha Niy-yah* وثنية who did not receive divine revelation.

When a man marries a Murtad, the *Nikaah* will also be null and void or vice versa. If a man marries a woman and she turns Murtad before the *Watt* took place, then the marriage is *Baatil*. If she turns apostate after the consummation of the marriage, then we do not place her under Hadd until she has undergone her *Iddah*. The reason for this is that she may be Haamil (pregnant) and as a result thereof, the penalty is delayed. So, if a man has sexual relations with his Murtad woman, under the idea that she is still his wife because punishment was not meted out, then no penalty is to be executed against such a husband because of the *Shubu-hah* (uncertainty) that the *Aqd* was still intact.

The Nikaah is also Baatil if performed by a free man and a slave woman or vice versa.

Note: We must remember this rule: Any Watt which took place which does not make the Hadd Waajib upon the perpetrator, then Iddah is necessary and so too is the Mahrul Mithl. Any offspring from such Aqds remain firm and established (legal).

There are exceptions to the above clause. Remember, the clause stipulates the perpetrator. So the one to whom it is done to is exempted in some instances. If for example, a young Muraahiq مراهق boy (a boy who is not Mukallaf yet, but physically well built, and womenfolk with normal sexual desires may be strongly attracted to him), commits *Zinaa'* with a *Baaligh*

woman. The Hadd in this instance is not instituted upon the boy but definitely on the woman.

Likewise, if the man was insane and the woman was sane and *Baaligh*, then the Hadd is impliment against the woman. There is a remarkable difference here compared to the other situations. This is that *Iddah* is necessary here and any child which comes from such an act is regarded as legitimate.

What is the situation of a man who was forced to have sex with a woman who was satisfied? The *Sharee-ah* regards them both as adulterers but the man is not punished due to the *Shubuhah* (uncertainty) of having been forced. Punishment is meted out to the woman accordingly. No *Iddah* is compulsory and any child coming from such *Watt* is illegitimate. The reason for this is that it is not possible for a man under the above threat to even commit *Zinaa'*. There is that feeling of arousal which causes an erection in the man making it possible for him to have entry into the woman's vagina. If he was threatened, then it was not possible for him to be aroused for sex. He could even not have had an erection and therefore, there is a difference in *Hukum* between the *Mukrih* (the one who was forced) and the *Muraahiq* as well as the insane person.

The Discussion of Watt Ush-Shubuhah

Watt Ush Shubuhah causes the *Mahrul Mithl* to become *Waajib*. If a man sleeps with a woman who is asleep under the pretext that she is his wife, and afterwards the error is established, then no harm is done and *Mahrul Mithl* is given and the *Iddah* immediately becomes effective.

However, if the woman becomes aware of what was happening, then she is classified as an adulteress upon whom the Hadd becomes effective. The Shaafi-iys divide the Shubu-ah situation which averts the Hadd penalty and which binds the *Mahrul Mithl* into four categories:-

1. Shubuhatul Faa-il

This signifies the uncertainty of the perpetrator. This is a situation where the man has sex with a woman under the assumption that he is sleeping with his wife or that he is having sex with his slave woman. Afterwards the fact was established. Such an act is not classified as either *Halaal* or *Haraam*. This is so on the basis that he was unaware at the time, and as such, he is classified as one not under the decree of *Takleef* (commandment).

2. Shubuhatul Milk

This signifies uncertainty of possession. This is a situation where the man had *Watt* with a slave woman who does not really belong to him, e.g. there is a contract between him and another man concerning this slave woman that the one owes the other. The same rule applies to a man who slept with his **Mukaatibah under the assumption** that she belongs to him and only found out about his error afterwards. A Mukaatibah is a slave woman who is under contract with her master that she can receive her freedom once she had paid off her master a certain sum of money agreed upon between the two.

In both these circumstances, possession is not complete. This act is classified as *Haraam* although the Hadd is not executed because of the person's error. Such a person must be warned that it

is *Wajib* for him to establish the fact before he does anything which may be a violation of the *Sharee-ah*.

3. Shubuhatul Tareeq.

This signifies uncertainty of path chosen. This is a situation where the man marries a woman without *Waliy* and witnesses and consummated the marriage by adopting the procedure of *Imaam Dawood Ath Thaaw Hiri* who *Hukums* that such a marriage is correct. Taqleeding (adopting the procedure) of this *Imaam* is not classified as *Halaal* or *Haraam*. But doing the above act without having adopted the procedure of *Imaam Dawood Ath Thaawhiri*, is classified as *Haraam*.

4. Shubuhatul Mahal

This signifies uncertainty of place. This is a situation where a man had sex with his son's slave woman under the assumption that whatever belongs to his son, belongs to him, or, when a son has sex with his father's slave woman under the same assumption. This type of *Watt* is considered to be *Haraam* because, it is wrong to indulge in something one assumes to possess without verifying whether one really possess it.

The first three situations of **Wat Ush Shubuhah** do not make the Hadd *Wajib*. The *Mahrul Mithl* must be given in its two forms (a) **Mahr for a Bikr** (b) **Mahr for a thay-yib**.

If the Shubu-hah is repeated, then the *Mahr* is not increased to the *Mahrul Mithl* for the number of times sex took place. Example: The man slept with a woman assuming her to be his wife. After that, he slept with her again under the same assumption, then one

Mahrul Mithl is *Waajib* if he did not give it to her previously. But, if the man slept with her a number of times under the decree of *Shubuhatul Milk* and with another woman under *Shubuhatul Faa-il*, then two dowries are necessary.

If a man slept with a woman under the decree of *Wat Ush Shubuhah* and her *Mahrul Mithl* is high on the basis that she is an extremely beautiful person, and after a time he slept with her (a second time) under the very same *Shubuhah*, then he must still give her the equivalent *Mahrul Mithl* which he had given her in the first instance. He cannot come forth with the argument that she has lost some of her beauty through time and age.

The Discussion of the Nikaah Ash Shighaar

It has been reported by Saydunaa Abdullah Bin Umar who said:

"The Nabi S.A.W. prohibited the Shighaar marriage. The Shighaar signifies that a man marries off his daughter to another man upon the condition that the other man again marries his daughter to him with no Sadaaq in between them".

أَنَّ رَسُولَ اللَّهِ (صلى الله عليه وسلم)
نَهَى عَنِ الشَّغَارِ وَالشَّغَارُ أَنْ يُزَوَّجَ
الرَّجُلُ ابْنَتَهُ عَلَى أَنْ يُزَوَّجَهُ الْآخَرُ
ابْنَتَهُ لَيْسَ بَيْنَهُمَا صَدَاقٌ

رواه البخارى

According to the Arabic language, Shighaar signifies the position the dog is in when he urinates (lifting up his leg). But, according to the *Sharee-ah*, it is when the *Aqd* is contracted by two men marrying each other's daughter on the grounds that each daughter becomes the dowry of the other.

زَوَّجْتُكَ ابْنَتِي عَلَى أَنْ تُزَوِّجَنِي

بِسَّتِكَ وَيَضَعُ كُلُّ مَنِهْمَا

صَدَاقَ الْآخَرَى

Example: The man says to the other: "I have married you to my daughter on the condition that you marry me to your daughter", and both of them takes each other's daughter as *Sadaaq*".

The same rule applies when a man says: "I have married you to my daughter on the condition that you marry me to your daughter and then each of them puts the sum of one hundred pounds down as *Sadaaq* for the other". The mentioning here of the *Sadaaq* does not remove the bodies of both women from actually being *Sadaaq*. The same applies in the first instance. Their bodies are actually being treated as the *Sadaaq* which is invalid.

The reason for such marriages being classified as *Haraam* is on the basis that they are now classified as partners in the *Aqd*. We all know by now that the *Sadaaq* is the wife's prerogative. She has the full say in this matter. So if a father stipulates that he is marrying his daughter off on the basis that the other party must do the same to him, then it is as though her body belongs to both father and her husband.

However, if the body is not mentioned in the contract, then such an *Aqd* is regarded as *Sah* e.g. A man says to the other: "I have married my daughter Fatimah to you for an amount of one hundred Dollars/rand and that you marry me to your daughter Jameelah for the sum of one hundred and seventy Dollars/Riyaals. Such an *Aqd* without dispute is correct.

In certain outskirts in Muslim cities, it is quite common that two sons of a man marry two daughters of another person at one given *Aqd*. At the *Aqd* no statement is made of the dowry, but it has

already been mentioned outside of the *Aqd* and the amount is well known. This is not **Nikaahush Shighaar**.

The Discussion of How Mahrul Mithl is Established

Mahrul Mithl is established, firstly, through the concept of *Qiyaas* (comparison). She compares herself to her female relatives and says to herself, if that woman was a man, would he have been *Haraam* for me on the basis of *Asabah* عصبه (paternal relationship).

If the answer is in the affirmative, then she investigates what her aunts (from father's side's) dowry were, when they got married. If it was a stipulated amount which they all got married for, then that amount becomes her *Mahrul Mithl*.

If there are no paternal relatives, then she compares herself, firstly, to:

- (a) Her own Blood sister.
- (b) Her sister from father's side.
- (c) Daughters of one's brother.
- (d) Daughters of a brother's son.
- (e) Daughters of uncles.
- (f) Aunts from father's side.

If it is not possible to consider the *Mahrul Mithl* with anyone mentioned above, for the simple reason, that they are non exis-

ent, or, that they do exist, but their dowries are unknown to them, or, because, they are unmarried. She then compares herself to relatives from her mother's side. Here it is meant relatives from her maternal grandparent's side. In this category children of paternal aunts and sisters are not considered as family, but, as strangers. This is the sequence to follow:-

- (a) Mother.
- (b) Sisters of mother (aunts).
- (c) Grandmothers.
- (d) Aunts from mother's side.
- (e) Daughters of one's mother's brothers.

If the above cannot be established, then she compares herself to the womenfolk of the city in which she lives and specifically womenfolk who can be linked to her in beauty or ugliness which man actually strive for to acquire. An example of this is: "eloquence, virginity, divorcees or even elderly women". Therefore, if it so happens that this particular woman is in possession of a quality much sought after, and there is one among her family who even remotely can be compared to her, then a *Sadaaq* is set for her accordingly.

It is said that a woman must forgive and display indulgence if some of her family do not possess qualities which are much sought after. If for example, a woman has three paternal uncles. One is a noted *Aalim* while her other two uncles are illiterate. The *Aalim* then married his daughter for one hundred Dollars while the other two married their daughters off for fifty Dollars. Such a woman's *Mahrul Mithl* is then established at fifty Dollars. The comparison is taken towards the children of the two illiterate brother's children. The reason why one hundred dollars was

charged, was on the basis that an Aalim's daughter will be much sought after unlike others not in this category.

On the other hand indulgence must also be displayed when a husband is in possession of certain qualities which are much sought after e.g. A woman married an Aalim for one hundred dollars, but, her sister got married for two hundred dollars to an average man. The *Mahrul Mithl* is established and fixed upon the following rule: "If a husband is an Aalim, *Mahrul Mithl* is fixed at one hundred dollars, but, if the husband is not an Aalim, then *Mahrul Mithl* is fixed at two hundred dollars.

☆☆☆

بسم الله الرحمن الرحيم
 اللهم إني أسئلك الهداية فيما كتبت وأكتب
 وأسئلك التوفيق إلى خير طريق يوصلني إلى جنتك
 واجعلني من عبادك الطائعين المنيبين الشاكرين
 واغفر لي يا مولاي إن أخطأت أو زلت بغير
 قصدني ولا عمد فإنك يا سيدي
 "أهل التقوى وأهل المغفرة"

GLOSSORY

Definitions of Terms and Words

Ahadeeth	Sayings of our Holy Prophet.
Ajamiy	Non Arab/Foreigner.
Akhirah	The Hereafter.
Amaanah	Trust/An entrustment.
Ammatayn	Two paternal aunts.
Arabi	Arabian.
Asabah	Family relationship from father's side.
Asnaam	Idols.
Aqd	Contract.
Aqd faasid	A contract which is incorrect.
Aqd Saheeh	A contract which is correct.
Aqdun Nikaah	A marriage contract.
Baaligh	One who is mature and under commandment/compulsion of law.
Banee Israa-eel	Children of Israel (Jews)
Baatil	Null and void.
Barakah	Blessings.
Bikr	Virgin.
Darul Harb	A place wherein Muslims are at war with Non-Muslims.
Dawood Ath-Thaawhiriyy	The name of a learned scholar who interpreted everything literally.
Deen	Religion.

Dunya	The world.
Eemaan	Faith.
Eejab	A phrase spoken by the bride's representative when he marries off his daughter.
Fard Kiffayah	A compulsion of sufficiency.
Faasiq	A sinner.
Fitnah	Discord/dissention.
Fiqh	Jurisprudence.
Fuquahaa	Muslim Jurists.
Furoo	Branches "Ilmul Furoo' " the knowledge or doctrines of the branches.
Fatwah	Verdict.
Fasakh	Annulment of marriage.
Ghinaa	Singing.
Ghusil	Bathing (to have a bath).
Hurmatul-Musaahrah	A situation of unlawfulness in relationship through marriage.
Haamil	Pregnant.
Hayd	Menstruation.
Hadd	Penalty.
Hadeeth	A saying of the Holy Prophet.
Hukum	Decree.
Haakim	Judge.
Halaal	Lawful.
Haraam	Unlawful/prohibited.
Hurriyah	Free of slavery.
Hirfah	Profession.

Haj	Pilgrimage.
Islaam	The name of the Religion of Submission
Imaam Shaafiy	The leader of a school of ideology based on the Shhafi-iy School of thought (Math-haab).
Hanafiy	The leader of a school of ideology based on the Hanafiy Math-haab.
Hambaliy	The name of a school of ideology based on the Hambaliy Math-haab.
Maalikiy	The name of a school of ideology based on the Maalikiy Math-haab.
Iddah	Period of waiting.
Ihraam	A situation one is in when contemplating going into the deeds of Haj or Umrah or both.
Ilaah	God.
Injeel	Bible.
Ikhraah	To be forced.
Jaa-iz	Permissible.
Jumhoor	Majority.
Khayaal Ath Thil	Motion picture making/photography.
Kinaayah	Indirect form of speech.
Kafaa-ah	The situation of equal suiting.
Kuff	The same as Kafaa-ah/compatibility.
Kitaab	Book.
Kitaabiy	The name given to a person who is a follower of the Christian or Jewish faith.
Khiyaar	Choice.
Khaalatayn	Two maternal aunts.

Mukrih	One who is forced.
Mudd/Moed	Three quarter kilogram.
Mustahab	Another name of something that is sunnah.
Mahram	One who is Haraam for marriage.
Math-haabs	An adopted procedure of ideology.
Mau-ithah	admonishment.
Mawaa-ith	Plural of Mau-ithah.
Muslim	One who submits to Allah's Will.
Musaaharah	Family relationship through marriage.
Majnoon	An insane person.
Mahrul Mithl	A stipulated dowry set according to what family relations got married upon.
Mukaatibah	A slave woman whose freedom is set upon a stipulated amount she has to pay.
Makkah	The city where the Holy Prophet was born.
Mahr	Dowry.
Muhalil	The name of the person who marries a woman who has been divorced thrice, to make her lawful for her previous husband.
Makrooh	An action which is abhorrent.
Murtad	An apostate.
Mushrik	An idolater / Polytheist.
Mukallaf	One under compulsion of law.
Nasaaraa	Christians.
Nifaas	Blood which flow after childbirth.
Nikaah ash-Shighaar	A form of marriage of two fathers who marries each other's daughter without dowry.
Nikaahul Mut-ah	A marriage contracted for a stipulated time.
Niyah	Intention.

Nibt
Nabiy
Nasab
Nikaah

Owliyya

Qurashiy
Quraish

Qaraabah
Qabool
Quadee
Quadaa
Qiyaas
Qiyaamah

Rawaafid
Radaa

Sittinaa or
Saydunaa
Sah
Sharee-ah
Sareeh
Seeghah

Sahaabah
Shubuhatul
Faa-il

Nabateans (A Coptic).
A Prophet.
Family lineage.
Marriage.

Plural for Waliy representative.

One who belongs to the Quraish tribe.
The tribe from which Nabiy Muhammed hails from.
Family/relatives.
Acceptance of a marriage contract or other.
A judge.
Debt being paid in.
Comparison.
The Day of Judgement.

A sect of the Shia who ceased to be Muslims.
Foster relationships.

Honorific words preceding the name of a companion of the Nabiy S.A.W.
Correct.
Name of Islamic code of ethics.
Directly.
Form of speech/wording from both the bridegroom and the bride to be's representative.
Companions of the Prophet.
Error of the doer/perpetrator.

Shubuhatul-Mahal	Uncertainty/error of place
Shubuhatul-Milk	Uncertainty of possession.
Shubuhatul-Tareeq	Uncertainty of path.
Shee-ah	
Imaamiy-yah	A sect who believe in a certain group of people as their infallible Imaams who guide them to righteousness.
Saa-ibah	People who worship th stars.
Sayduna Jibreel	The Angel Gabriel/Jibreel.
Sayduna Eesaa	Nabiy Eesa/Jesus.
Sadaaq	Dowry.
Sadaquah	Voluntary alms.
Shuroots	Rules.
Sunnah Mu-Akkad	An action in worship which is strongly encouraged by the Sharee-ah.
Suwar	Idols/sketches/paintings/portraits.
Tasweer	Drawing/sketching illustration/photography.
Taabi-iy	A successor of a companion.
Talaaq	Divorce.
Tarteeb	Proper sequence.
Thay-yib	A divorcee or widow.
Talaaq Baa-in	An irrevocable divorce decree.
Talaaq raj-ee	A revocable divorce decree.
Taukeel	When the representative of the bride commissions someone to solemnize the marriage contract.
Thimmiy	A Christian living under Muslim Government.

Takleef	One under compulsion of law.
Ta'reef	Definition.
Usool	Origins/principles.
Ubbadul Asnaam	Idol worshippers.
Ubbadul au-thaan	The same as above.
Umrah	Pilgrimage to Mecca of a lesser nature.
Ulemma'	Learned men.
Wilaayah	The situation of representation.
Watt	Saxual act.
Wat shubuhah	A sexual act erroneously performed.
Wakeel	Overseer.
Waliy	Representative.
Waliy Ghayru	The father/grandfather, brother or any Mahram
Mujbir	the divorcee or widow.
Waleemah	Wedding Banquet.
Yahood	Jews.
Zawwaj	Wedding.
Zouwj	Husband/bridegroom.
Zouwjah	wife/bride.
Zinna'	Adultery
Zaaniyah	A woman who committed adultery.



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